

20th January 2021

From: The Balbriggan Community Committee (BCC) on urban seagull issues

To: Whom it Concerns at the Department of Housing, Local Government and Heritage - National Parks and Wildlife Service:

This is the first email in a sequence of three emails that comprise our Submission to the Public Consultation process (PCP) on Wild Birds Derogations for 2021.22

We request a confirmation copied to each of our members cc'd above that you have received our submission.

The full composition of our submission is as follows:

Email 1 of 3 (this email): contains a single document in PDF format and this is the main body of our submission.

Email 2 of 3: Contains attachments as follows:

1. BCC Minority Report to the Consultative Committee (CC) established to examine impacts of urban seagull colonies on communities and make recommendations. BCC has two seats on the CC and we submitted this Minority Report to the Minister and the Dept./NPWS on 20th April 2020.
2. The First Interim Report of the CC to the Minister/Dept./NPWS made on 17th April 2020
3. Email sequence between BCC and the Dept./NPWS (4 message) concerning this PCP dated 21 Dec 20, 22 Dec 20, 30 Dec 20, and 7 Jan 2021
4. Email sequence between BCC and the Dept./NPWS and second former CC chair (4 messages) dated 2 Nov 20, 3 Nov 20, 16 Dec 20, 18 Jan 21
5. Legal Opinion (PDF Document) given to the Dept. on 11th August 2020 and then to the CC on 1 Sept 2020 (note evidence provided to the Barrister by BCC for consideration in his opinion is attached in email 3 of this submission sequence)
6. Roughan and O'Donovan Camera Drone study (2018) of nesting seagulls in parts of Balbriggan, Skerries and Howth - commissioned by Fingal County Council
7. BCC Community Report (PDF) December 2017 to Minister and Dept./NPWS - on use of the Balbriggan Derogation in 2017 and several other pertinent matters
8. Correspondence Dec 2016 et seq between the Dept/NPWS and the HSE on urban seagulls and public health and safety
9. Correspondence September 2016 between BCC and the Dept./NPWS on urban seagull issues
10. Email 1st July 2016 from Dept./NPWS claiming to set out the legal position on urban seagull issues and compliance with the Birds directive.

Email 3 of 3: Contains attachments as follows:

- 1 Emailed attachments (evidence and questions) 12th July 2020 the first former CC Chair to be provided to the Barrister hired by the Dept./NPWS to give legal opinion to the Dept./CC on urban seagull issues

2 Email (further evidence and questions) July 2020 via the first former CC Chair to be provided to the Barrister hired by the Dept./NPWS to give legal opinion to the Dept./CC on urban seagull issues.

In conclusion therefore, our full submission with attachments as listed above, is subitted in a set of 3 covering emails for the consideration of the Dept./NPWS towards the decisions to be taken for the 2021 Derogations Declarations in relation to the protection of public health and safety State-wide.

The Main body of our submission is attached below.

The Balbriggan Community Committee (BCC) on urban seagull issues
as cc'd above

all names and postal addresses were previously provided - if required again for this process
please send us a request by email and we will comply

**Department of Housing, Local Government and Heritage (DHLGH)
National Parks and Wildlife Service (NPWS)**

**Public Consultation Process (PCP) with regard to the
Wild Birds Derogation Declarations, 2021.22**

Submission from Balbriggan Community Committee (BCC) – on 20th January 2021:

Foreword:

Ahead of the body of our submission BCC finds ourselves to be obliged to state for the record that we make this submission on its evidence-based merits in good faith, but also under protest due the issues we raised with the Dept./NPWS in correspondence on 21st, 22nd December last, and on 7th January last – in responses to the Dept./NPWS email of 30th December last – in our view the PCP is materially defective for the reasons notified and therefore highly likely to fail to properly serve its ultimate purpose viz. State-wide protection of public health and safety.

Our protest position on this PCP also applies to the long delay in the response from the Dept./NPWS to our follow up submissions (2/3 November and 16th December last) to the ongoing Legal Module of the Consultative Committee on urban seagull issues. In our view, it seems clear from the legal advice in August 2020 that the Dept./NPWS is using a legally invalid, extinguished and materially higher decision threshold for derogations since 1986 – such that the legitimate interests of public health and safety continue to go unserved by the Dept./NPWS.

We have raised these matters with the Ministers responsible and we are also raising them with the Secretary General of the Department tomorrow, 22nd January 2021.

1. Main points of Submission:

(Please see a list of relevant supporting documents and emails (attached with the email covering this document) with pertinent comments at Section 5.

- 1.1 BCC formally requests that our community and indeed other communities similarly adversely affected by high density urban gull colonies receive the legal protection we have as of right under the Birds Directive viz. under Article 9.1.a), and under the 2011 Wild Life Regulations SI 477 Section 54.2.c) – “*in the interests of public health and safety*”. We also refer the Dept./NPWS specifically to the Wildlife Amendment Act 2000 (Section 59), which in our view clearly supersedes and extinguishes the decision threshold (“*represent a threat to public health and safety*”) in the 1986 Regulations that are used for Derogation Declarations. We have set out a specific proposal for an appropriate and proportionate Derogation at section 2 below.**
- 1.2 If, for some reason, as yet unexplained, the Dept./NPWS continues to deny legally prescribed protections to our community, and/or to other similarly impacted communities, under the legally defined threshold “*in the interests of public health and safety*”, we contend that our evidence based submissions on the public health and safety implications for communities being de facto compelled by current policy to live with high density seagull colonies demonstrate that even the materially higher threshold that is wrongfully used by the Dept./NPWS as set out in the 1986 Regulations, viz. “*represent a threat to public health and safety*”, has itself been more than met. Our contention, in addition to being evidence-based on public health and safety grounds, is also fully supported by long-**

standing policy and precedents on urban seagull issues and public health and safety in all neighbouring jurisdictions, under the Birds Directive, Brexit notwithstanding.

1.3 The following evidence-based material forms an integral part of our submission:

- a) **From our role as members on the “Consultative Committee (CC) to examine the impact of urban seagull colonies on communities and make recommendations”**
- **The First Interim Report (FIR) and Minority Report (MR) (attached) submitted to the Dept./NPWS and the Minister in April 2020 – specifically the recommendations in these reports in the interests of citizens that were based on expert advice to the CC viz.**

FIR7.2.4 The Department of Culture, Heritage and the Gaeltacht should ensure appropriate input on public health is provided by an appropriate expert on wildlife matters pertaining to public health, particularly in communities with relatively high densities of gulls.

FIR 7.2.5 Consideration should be given to the inclusion of a state advocate on the CC that would act on the part of citizens that are impacted by urban gulls.

FIR 8 Recommendation towards 2020/21 Derogation Recommendations for the 2020/21 Derogation have been made by both BCC and BWI to DCHG independent of this report. Any decisions pertaining to the 2020/21 Derogation should be made to protect the interests of public health and safety in keeping with national and EU law. The limited period of time available between the completion of this report and the annual Declaration should be noted, in addition to the COVID-19 emergency. On account of this exceptional year, consideration should be given to facilitate those in selected pilot target areas, where legitimate needs arise, to avail of a licence.

MR We have submitted these recommendations to the Minister (and previously to the Chair of the CC for sharing with all members) in good faith.

*MR 1. DCHG/NPWS should include the Herring gull (and other gull species if necessary) in the 2020.21 State-wide Declaration and should extend the Balbriggan provision to all impacted urban areas in a simple General Licence like the one used in Northern Ireland for many years - permitting nest and egg removal on public health and safety grounds: (see **attached MR in full**)*

*MR 2 DCHG/NPWS should seek early discussions with the Local Government Management Agency (LGMA) and a) request that Local Authorities with cities, large towns and large residential areas conduct specified (NPWS data) surveys and provide an up-to-date assessment of the impacts of urban seagull colonies in residential areas, schools, creches, universities, hospitals and all other human care facilities, also premises involved with production, manufacture, storage, sale or consumption of food (see **attached MR in full**)*

*MR 5. DCHG/NPWS should notify the Department of Education of the intention to develop new urban gull management policy insofar as it will relate to schools, and universities: (see **attached MR in full**)*

*MR 6. DCHG/NPWS should notify the Department of Health, the Health and Safety Executive, the Health Information and Quality Authority, and the Department for Children of the intention to develop new urban gull management policy insofar as it will relate to hospitals, other medical facilities, care facilities, creches: (see **attached MR in full**)*

MR 9. DHLGH/NPWS own the policy lead on the urban gull management issues

and funding and resourcing issues that arise in the creation of new policy must be identified, quantified and negotiated with and between the involved organisations. Continuing to stand off this issue and watch rapid proliferation continuing un-resisted is contrary to effective public administration and inimical to the legitimate interests of citizens impacted by the problem.

- a) Local Authorities are not going to engage unless and until the resources issue is acknowledged and properly addressed – Fingal County Council has said so on the record to BCC and in the CC, and the Minister for Housing Planning and Local Government has stated on the record that this issue is “primarily a matter for DCHG”*
- b) Schools and Hospitals will not have funds to deal with this problem, especially large, established colonies – there is no point in DCHG either waiting for them, or telling them, to “apply for a licence” as their problems escalate and entrench*
- c) at its core, this is a public health and safety issue where high density colonies have established and are expanding rapidly and un-resisted – and ‘the consumer pays’ principle does not and should not be applied*
- d) continued prevarication will make the problems bigger, worse, more difficult and expensive to address, and more likely to lead to harm measures being taken.*

MR 11. DCHG/NPWS should set out a clear list of realistic and practical conservation and research objectives (including funding and resource proposals) in relation to urban gull colonies and their prudent management, with public health and safety unequivocally positioned as an overriding priority:

- a) it is well past time to accept that urban-living and rural-living gull species groups are separate and do not mix, and to stop conflating their numbers and conservation status for policy purposes – as has now been explicitly recognised in the new policy for England.*
- b) blaming food waste behaviours on the urban gull situation is facile – the species has chosen urban living for reasons that also include efficiency, lack of predation, better shelter, higher temperatures, breeding success, and possibly most of all because, unlike many other bird species, they are not being resisted by humans*
- c) seeking to coerce society to accept and get used to the huge negative impacts of freely proliferating high density urban gull colonies is a mistake, is certainly not a conservation policy that includes prudent species management, and will inevitably lead to more severe measures being taken against urban gull species.*

MR 12. DCHG, as the statutory body responsible for the implementation of article 9.1.a) of the Birds Directive that is intended to protect the interests of public health and safety should pay close attention to the now globally accepted ‘One Health’ policy that closely connects human health, animal health and the environment:

- a) Zoonosis - 60% of all infectious human diseases come from animals/wildlife
<https://www.cdc.gov/onehealth/basics/zoonotic-diseases.html>*
- b) AMR is a major public health threat and seagulls are clearly implicated as being contaminated with AMR and dispersing it in the environment*
- c) communities being compelled as a default outcome of DCHG/NPWS policy to accept high-density expanding urban seagull colonies in close proximity (homes, schools, hospitals et al.) are logically exposed to higher risks than communities not living with such conditions; the policy default needs to be*

changed with urgency to respect the overriding priority of public health and safety

- d) *The EPA's AREST project is showing leadership on the AMR environmental concerns; however "the level of testing on animals is negligible" – Professors McMahon, and Morris, CC meetings 3 and 4, respectively,*
- e) *prevention is better than cure – the Balbriggan community will not wait until we are the source of AMR cross-contamination data, and neither would other impacted communities if they had a similar knowledge and understanding of what is going on as we have.*

A core tenet of BCC's position is that public health and safety is and must be treated in policy as an overriding priority (ref. Wildlife Act 2000 Section 59). Any research that is required on urban seagulls may be resourced and completed in parallel with proportionate control measures in the interests of public health and safety. Such a parallel Controls and Research policy is specifically enunciated and carried out operationally in the two most recently published national policies previously provided by BCC viz. the new urban gull policy for England 2020, and the Dutch urban seagull policy (Dutch Supreme Court August 2016) – in the interests of public health and safety. To date, conservation interests and regrettably the Dept./NPWS maintain – in the face of extensive evidence of need to protect citizens - a position that the interests of public health and safety are subordinate to the interests of urban seagull colonies. In our view, this is an inhuman, illegal and morally wrong policy position, especially when the non-harm controls we are seeking since 2016 on public health and safety grounds are deployed in all neighbouring jurisdictions for many years now under EU law, notwithstanding Brexit.

- **The First 'Draft' Legal Opinion (attached) received by BCC on 1st September 2020 in reply to the evidential material and questions that we submitted for opinion in July**
- **Our follow up questions (attached) and all evidential material as submitted to the CC's Legal Module via the CC Secretary (following written agreement of the Former CC Chair on 22 Oct last) in July 2020, November 2020 and December 2020;**

Note to Dept./NPWS – under a written agreement on 22 Oct last with the first former chair of the CC Mr Derek McLoughlin that follow up material for the legal module should be submitted and examined, and upon written agreement from the CC Secretary on 3rd November that he would forward our follow up material to the Barrister who is advising the CC's legal Module, we submitted such material (attached) on 2nd November, 3rd November (a modified attachment from 2nd November), and a final batch of material (subject to responses still awaited) on 16th December last. As of 17th January 2021, having not received any response to our material as submitted, we copied our follow up submissions to the Barrister to the new incoming Chair of the CC Mr Alan Lauder asking him if he would seek a response from the Dept./NPWS to our extant questions as submitted to the Barrister. On 18th January, we received a reply from Mr Lauder (attached) indicating as follows *"Firstly, and importantly, BCC have asked me to raise the matter of when they should expect a response to their submissions to the Barrister via the CC Secretary dated 2nd & (3rd Nov. - a modified attachment) and 16th Dec. in relation to the "ongoing Legal Module of the Consultative Committee". I would strongly urge that the department reply to them with a timescale asap. They raise the point that this response would have been of value in their ability to respond to the consultation on the derogation."* In the same piece of correspondence, Mr Lauder informed us of his decision to resign as Chair – a very surprising development indeed.

Therefore as we have not received any response to the follow up material that we submitted to the Legal Module of the CC on 2/3 Nov and 16th December, for the time being and considering the closing date for this PCP, we must for the purposes of this document, and legal aspects of our submission, rely mainly on the August 11th 2020 first draft of the legal opinion which in our view seems to confirm unequivocally that the legal threshold being used by the Dept./NPWS in its decision whether or not to derogate to protect citizens' public health and safety is "higher" than the legal threshold in the Directive, viz.

3.14. Thirdly, the reference to 'threat' in the 1986 Regulations seems to be a higher threshold than Article 9(1) of the Birds Directive which refers to 'in the interests of public health and safety'.

and also what it states regarding the clear and accepted evidence (UK expert, Peter Rock on seagull noise, CC Meeting February 2020; Professor Niall Moyna DCU, impacts of sleep deprivation, RTE Awake programme – programme recording previously provided)) that exists for a derogation on public health and safety grounds due to the noise impacts from urban seagull colonies and the threat to road safety viz.

5.38. If there is objective evidence that gull activity is having a detrimental effect on people's sleep patterns such as to potentially cause endangerment on public roads, this may be well support an argument for a derogation under the public health and safety derogation in Article 9 of the Birds Directive (subject to there being no reasonable alternative).

and also on the conclusions at 6.3. and 6.4 in respect of the implication of urban seagulls in the dispersal of Antimicrobial Resistance (AMR) – a major public health threat - in the community, justification for a Derogation on public health and safety grounds, and the need for proportionality in such a Derogation viz.

6.3. Article 9 expressly refers to public health and safety as a derogation criterion and would appear in principle to allow for a derogation to address the concerns articulated at the Committee in light of the evidence of AMR and zoonosis as well as more anecdotal evidence.

6.4. However, it must be construed restrictively and in its totality and must specify the particular criteria in Article 9(2) of the Birds Directive.

AMR = Antimicrobial resistance – acknowledged as the no. 1 threat to public health globally and nationally before the arrival of CoViD-19. Professor Dearbhaile Morris provided her expert opinion to the CC in April 2020 when asked specifically about high-density seagull colonies on our schools (Refer to the Roughan O'Donovan camera drone study in 2018 which filmed high Density colonies on a number of schools" – "an abundance of caution is required when dealing with high density urban seagull colonies".

In our view, it is clearly not "in the interests of Public Health and safety " to be permitting high density urban seagull colonies to breed on our schools. The Dept./NPWS expert conservation opinion (Rock, April 2020), expert Zoonosis/Medical public health opinion (McMahon, February 2020, Morris April 2020) confirming that high density seagull colonies should not be permitted to nest on schools, and that the Birds Directive caters for a legal derogation on public health and safety grounds based on the AMR and Zoonosis evidence available and other anecdotal evidence.

The evidence and expert advice standard here is incontrovertible – schools and our children in those schools, and the staff in those schools must be protected. CC meeting 4 unanimously recommended special attention to schools and also that the National Parents Council be contacted on the issue – see draft minutes – Final minutes of CC meetings have still not been published for any of the four CC meeting to date – contrary to written assurances regarding the publication of CC minutes that BCC received from former Minister Madigan on 15th February 2018 – before we agreed to join the CC..

2. Specific Derogation Proposals:

2.1 Our proposal following is based on the large and verified evidence base gathered and submitted by our community since 2016. In our view, it is also fully supported by the expert advice and legal opinion (to date) that has been given to the CC since it commenced its work in June 2019, and indeed the recommendations made by the CC in its First Interim Report/Minority Reports (attached) as submitted in April 2020.

2.2-Our proposal relates directly to the existing Balbriggan Derogation, but given that it is grounded in substantive matters concerning public health and safety, it therefore applies equally and logically to all urban areas that are seriously impacted by high density urban seagull colonies that continue to proliferate freely and unmanaged.

2.3 Our Derogation proposals for 2021.22 and future years are as follows:

2.3.1 Derogation as catered for under the Wildlife Act 2000 (Amended) (Section 59) and the 2011 Wildlife Regulations section 59 and the governing Birds and Habitats Directives:

- I. as a minimum for 2021.22, a standard recurring derogation is required which states clearly in respect of people's homes, schools, hospitals and other medical facilities, and premises involved in the manufacture, storage, sale and/or consumption of human food that:
 - i) the above-specified premises are generally unsuitable as nesting sites for (specified seagull species) for reasons of public health and safety and for protection against injury and/or disease**
 - ii) it is legally permitted to remove the nest and eggs of (specified seagull species)**
 - iii) where chicks of (specified seagull species) have hatched they may be captured and relocated under licence refer to "X to be specified by the Dept./NPWS"**
 - iv) for any other issues with (specified seagull species) for any premises other than those listed above, a licence may be sought (ref x to be specified by the Dept./NPWS).****
- II. such a derogation should be announced/confirmed in February 2021 and stated to be on a recurring basis in respect of the specified premises, and should be publicised in national media (print, on-line and broadcast).**
- III. In the case of schools and Hospitals, formal communication of the Derogation provisions should also be provided through the Departments of Education and Health and the HSE.**

2.3.2 BCC refers the Dept./NPWS to our Minority Report (attached) and to the CC's First Interim Report (attached) submitted in April 2020 for our full set of recommendations and proposals on the urban seagulls issue. In particular, we also point to the Local Government services models for addressing urban seagull issues in all neighbouring jurisdictions, and also for the need to protect workers or other groups of people. e.g. our schoolchildren in impacted schools, who come into close contact with high-density detritus from urban seagull colonies.

2.4 Comments on the Balbriggan Derogation since 2017.

Once again we must advise the Dept./NPWS that the historic Balbriggan Derogation

has had the following defects – all of which would be reasonably addressed subject to implementation of 2.3.1.a) above:

- i.) The derogation is issued too late to accommodate need – seagulls begin nesting as early as mid-April; the current ‘system’ is flawed in that nest removal commenced in mid-April on a site, may have that permission removed on 1st May e.g. on the second or third iteration of a nest removal process – a patently ridiculous proposition. This is why the ‘principle’ needs to be accepted that certain specified sites at 2.3.1.a) are unsuitable as nest sites for seagull species, and why earlier notice of the Derogation makes sense.
- ii.) The derogation is not transparent; very few people know about the NPWS website or the derogation process therefore an essential measure for reasons of public health and safety is not being properly communicated to people, schools, businesses etc. The lack of transparency is not at all consistent with publicity from other Government bodies on matters of public health and safety/

2.5 We also propose full transparency with regard to this PCP process and the resulting processes, all evidence weighed, and comparative judgement standards across all species considered - up to and including decisions on the Derogations Declaration and the publication thereof. Once again, we point out that seagulls begin nesting in mid-April and 1st May materially too late for the publication of Derogations in respect of seagull nests/eggs. It is not sensible or satisfactory to say that the 2020 derogation persists until 30th April as this produces a legally nonsensical position where a nest on a given site may be legally removed once or twice as seagulls retry to nest, but if the gulls nest a third time on or after the 1st May and the derogation is not renewed, it is illegal to remove the third nesting. Such silly minutiae ignore the fact that it is public health and safety that is at stake here.

At the risk of repeating ourselves, the Dept./NPWS needs to accept, like all neighbouring jurisdictions, that certain specified locations (2.3.1a above) are just not suitable for seagull nesting on public health and safety grounds – and a standard Derogation needs to reflect that fact.

2.6 In conclusion, our proposal is reasonable, sensible, legally sound and well preceded in every one of our neighbouring jurisdictions regarding how identical issues with urban seagull colonies have continued to be addressed over many years. Importantly, our proposal is also proportionate considering section 5.38 and recommendations 6.3 (Antimicrobial Resistance) and 6.4 in the legal opinion (attached) provided to the Dept./CC on 11th August last.

Based on large amounts of verifiable evidence and expert advice (conservation-oriented and medical/health-oriented) provided to the Dept./CC since it commenced its work in June 2019, in our view, it is essential to provide the protections outlined in our proposal to communities impacted by high-density urban seagull colonies. There is no justification for continuing with what is tantamount to “Irish exceptionalism” on the urban seagull issue at the expense of and to the serious detriment of majorly impacted communities.

3. Legal matters - refer to the ongoing CC Legal Module commenced in July 2020 including advice received on 11th August 2020 and ongoing work.

The Derogation Decision Threshold – i.e. the bar height for the decision whether or not to protect citizens from any given wild bird species.

- 3.1. BCC is taking an usual step in setting out what it considers is the proper legal basis for the legal decision threshold to underpin the Minister's prospective decisions on bird species derogations to protect citizens and their public health and safety under the Wildlife legislation. Our submission is based on expert, detailed and independent analyses and verified evidence. Setting of a transparent description of the legally valid decision threshold before a Consultative Process ought to be standard procedure for the Dept./NPWS but for reasons we have outlined to the Dept., in our correspondence dated 21 Dec, 22 Dec and 7th Jan. last, BCC considers it necessary that it should do so. BCC is convinced based on the legal advice provided to the CC and on the Dept./NPWS' own historic programme of legislation that the derogations and licences issued over many years including the current ones are unlawful and therefore invalid.
- 3.2. The European Communities Act, 1972 says that EU Directives '...shall be binding on the State and shall be part of domestic law'. The EU Commission states in its The ABC of EU law '...all institutions i.e. the legislator, administration and courts are bound by the Directives ... and have an obligation to interpret national law in accordance with the Directives' The Commission also states that '...the national authorities are therefore also obliged to bring the interpretation and application of national law which is secondary to Union law into line with the wording and purpose of Union law' If an independent view is required to convince the Dept./NPWS, Prof. Ronan Mc Crea, Professor of Constitutional and European Law at University College London is quoted in the Irish Times of 31 December, 2020 as follows - "Legally, the case law of the European Court of Justice requires the whole of the national law to be interpreted in the light of the requirements of the EU law." There is no valid or indeed reasonable argument in law or in policy to disagree with this position.
- 3.3. The 1979 Birds Directive allows the State to remove the protection for certain bird species 'in the interests of public health and safety' along with other defined reasons. This threshold or its equivalent applies in most of Northern European countries. In 1986, the Department refused to use the text in the Directive and devised its own text and permitted the removal of protection where species "represent a threat to public health and safety". No other EU country used or uses the Irish text. The Dept./NPWS introduced an arbitrary and higher threshold which gives bird species, including urban gulls, a higher protection than that permitted by law and thereby illegally and unjustifiably lessens the protection of citizens. A reasonable interpretation of the English language would also conclude that this threshold is not compliant with the text of the Directive. Expert legal opinion obtained by the BCC also confirms our position. Similarly, the legal opinion acquired by the Dept./NPWS to advise the CC concurs with us that the arbitrary decision threshold on whether or not to protect citizens that is being applied by the Dept./NPWS since 1986 viz. that any given species "represents a threat to public health and safety" is, to quote the opinion, "materially higher" than the legal decision threshold that is defined in both the Birds and Habitats Directives viz. that derogations may be granted "in the interests of public health and safety"
- 3.4. The Oireachtas, the relevant Minister at the time, Síle de Valera TD, and the Dept./NPWS (or at least its legal unit) in 2000 all agreed by dint of their actions that the threshold was not compliant with the EU Directive. In 2000 the Oireachtas enacted the Wildlife (Amendment) Act, 2000. This Act, with broad support among all political parties, including the Green Party,

represented by Trevor Sergeant TD former leader and Minister, introduced a new and lower threshold and allowed for a derogation 'for the purpose of preserving public health and safety' (Section 59). This legally defined decision threshold is the same as is used in Northern Ireland and in the UK. Materially greater protection is provided to citizens under this text even though, we believe, it is not fully in compliance with the Directive, but is much closer to the meaning in the Directive. The marginal notes at section 59 state that it is a 'Saver in the interests of public health and safety'. The Interpretation Acts state that marginal notes are not to be taken as part of the Act. While obviously accepting this, it is also clear that the Dept. appears to have believed that the new legal text in section 59 was compatible with the Directive. Otherwise it would not have expressed such a belief to the Oireachtas and have it as a permanent record in the Act. Surprisingly though it rejected the EU text in favour of a British one, considering the Bill commenced its path through the Dáil Committee stages in late 1999, this may have been connected to the Good Friday Agreement as the island of Ireland would have utilised the same threshold; this threshold applies in Northern Ireland up to the present day. However, the Wildlife Authorities in Northern Ireland implemented a General Licence to reflect this legal threshold in protecting its citizens from a number of wild bird species including the three pertinent seagull species – and this licence is still in force to this day, notwithstanding Brexit. This of course begs the obvious question we have asked repeatedly since 2016 – why and on what legal basis are citizens in the Republic of Ireland denied the protections routinely given to citizens in Northern Ireland, in identical circumstances, for identical species, and when an identical decision threshold for such protection exists on the Statute Books of the two countries?

- 3.5 More surprisingly, subsequent derogations prepared by the Dept. and signed by Ministers did not use either threshold texts and continued to use the already maligned and legally extinguished 1986 Regulations threshold text. By doing so it electively and deliberately overrode the primary legislation (the 2000 Act, Section 59) approved by the Government and enacted by the Oireachtas. (Note that BCC have requested the relevant papers for consideration within the CC's ongoing Legal Module and are awaiting the reply from the Dept./NPWS).
- 3.6 Both the Oireachtas and Government would fully expect that their decisions would be implemented and certainly would not be arbitrarily set aside by the NPWS and an element within the Dept. Furthermore, legislation is, as a general rule, based on policy decisions which are reflected in the actual legal text. Policies are implemented to reflect the law and to ensure compliance. It follows, therefore, that the policy of the Department was to apply a new and more EU compliant threshold. However, as stated above, and as evidenced by the legal text of Derogation Declarations signed by Ministers since 1986) this did not happen and the illegal and materially higher threshold continues to be applied by the Dept./NPWS and at least some part of the Department, contrary we believe, to both the law and overall Departmental and Government policy.
- 3.7 In 2011 the Department introduced further Wildlife Regulations and section 59 states that the Minister, subject to certain conditions, may grant a derogation licence "... in the interests of public health and safety". This is the precise text of the Directive's article 9.1.a) and the clearly, the Department after 25 years had sought to meet its legal obligations in line with the statement of the EU Commission above. The combination of policy and statutory decisions lowered the threshold to the correct and legally defined threshold in the Directives. It also means that by 2011 at the latest the Dept./NPWS accepted that the decision threshold in the 2000 Act as stated above by BCC, although lower and closer in meaning and effect than the already maligned 1986 Regulations, was still not compliant with the Directive. Otherwise why bring forward regulations to apply the text of the Directive instead of relying on an Irish bespoke text (the 2000 Act) or a British one. In law, both of these threshold texts are extinguished. In policy terms they are redundant. However, the NPWS and a part of the Department were not aligned

with the Department's policy and its revised legal threshold and ignored these Regulations. They continued – inexplicably, and in our view unjustifiably, to prepare and submit for Ministerial signature Regulations, Derogations etc. with the same text as in the much maligned and twice amended text set out in the 1986 Regulations.

- 3.8 We believe that all of the Derogation Declarations and licenses granted since 1986 including the current ones are ultra vires the law and hence invalid for the reasons outlined above. If this is not the case, it means that a Government Department can lawfully ignore and override EU law, and also primary and secondary Irish legislation that it itself produced and had succeeded in bringing into law. Such authority does not and cannot reside in any Department. Apart from the technical legal issues, the Department also made clear policy decisions and changes that underpinned the legislation and these were also ignored and overridden.
- 3.9 A core conclusion of the above position is that the PCP is required to adequately publicise and correctly apply the defined legal threshold as set out in the EU Birds Directive and also in the 2011 regulations. As it is State-wide Public Health and Safety that is at stake in the derogation process, this must be respected by the Dept./NPWS as one of the most core and highest priorities of the Government.
- 3.10 We have also written to the Department setting out our views on this PCP 21st December, 22nd December and 7th January last - which should be read as part of this submission. What is most of concern is that the Dept./NPWS has failed and continues to fail in its responsibility underpinned by law to properly protect citizens in important public health and safety areas.
- 3.11 British Isles

The relevant Department or Natural Heritage/Environment agencies in Northern Ireland, Scotland, Wales and England all allow for the killing of Herring Gull and the Greater and Lesser Black Backed Gulls and for the destruction of eggs and nests subject to certain conditions. All agree that the relevant regulations or orders are necessary “... for the purpose of preserving public health and safety”. Interestingly, the Scottish agency also considers these actions are necessary for “...preventing the spread of disease”. Such strong measures (eggs and nests removal on public health and safety grounds is being sought by BCC) are being advocated and implemented by the very agencies that have the significant remit in respect of natural resources, heritage and the environment. The combined population of these separate jurisdictions is c70m citizens; the Republic of Ireland population is c5m. It beggars belief that unique among the entire population of the land mass of the British Isles, Irish citizens are left without similar protection. In fact, many millions of our fellow EU citizens in Northern Europe also have similar protection. BCC has for nearly five years been researching gull species especially the safety and public health threats that they pose to citizens internationally, mainly in Europe. There is no evidence to suggest that Irish gulls in this jurisdiction are a different species to gulls in Northern Ireland, Scotland, Wales, and England or in Northern Europe. There is ample evidence that their behaviour, eating, breeding habits etc. etc. are the same. There is no legal or sustainable reason why citizens in this jurisdiction are not properly protected, and this should apply where there are high density gulls. The legal instruments used in neighbouring jurisdictions encompass their entire land mass and are not confined to specific geographic within those jurisdictions.

Four separate organisations which have devolved functions in respect of environment, heritage and the protection of animal species all have come to the same evidence based conclusion. Gull species have to be controlled to preserve public health and safety. These are their laws, these are their respective policies. The overarching legal and policy principles are that citizens are a

higher priority than gulls. Each separate organisation has taken measures they believe are necessary to preserve health and protect citizens. Around 70 million citizens are so protected. When it comes to the 5 million or so citizens in this jurisdiction a very different scenario exists. We have been dealing with the Dept./NPWS since 2016 and they have yet to articulate any real acceptance of the principle of citizens first, it is largely set aside and their real work concerns bird species; essentially and primarily their protection. The protection of citizens is relegated to a position of much lesser importance. What is especially surprising is that the Dept./NPWS is the equivalent organisation here with parallel role and functions but behaves in a significantly different manner as regards gull species and citizens protection.

We doubt very much if Ministers or Ministers of State over the years have been advised of the cross border implications of the diverging approach on either side of the border. It is a fact the Southern gulls flying north across the border can be legally destroyed to preserve public health in the North and that Northern gulls flying South are of no public health concern. Both scenarios also apply to Scottish, Welsh or continental gulls which arrive here. We are indeed fundamentally out of step which is clearly to the material disadvantage of citizens, our children, our elderly and our health compromised citizens.

A fundamental element of this submission is that the evidence used by the four neighbouring 'NPWS' organisations should on its own achieve similar protection to that of that c70million of our nearest neighbours. Indeed if this evidence is not sufficient to convince the Dept./NPWS we add in the many millions of our fellow EU citizens who enjoy the protections BCC and indeed other communities adversely affected by gull numbers aspire to have. As EU citizens we should not be so discriminated against by the Dept./NPWS.

3.12 Species that are controlled in the interests of public health and safety

There are three species listed in the annual Derogation in this jurisdiction that are a threat to public health and safety viz the hooded crow, magpie and feral pigeon. Similar Derogations in Northern Ireland, Scotland, Wales and England include the following species in addition to the three in this jurisdiction. These are a combination of carrion crow, Canada goose, jay, parakeet, house sparrow, starling and carrion crow. BCC has not examined in its research any of these species for the evidence used to support the decisions in neighbouring jurisdictions. All four of these jurisdictions have at least two other species included. In the absence of more detailed examination it is reasonable to conclude that we are again out of line with the decision making process here and a far more restrictive approach is taken here. In the case of gull species it is untenable

3.13 Further on precedents -we set out below further compelling evidence

The greatest proof that something can happen is that it already has. The Wildlife Act, 1976 provides that wild birds and their nests and eggs are protected other than birds listed in the Third Schedule of the Act. Three gull species are listed therein viz. herring gull, greater black backed gull and lesser black gull. The lack of protection allows for hunting, killing, and egg and nest removal. (We restate that BCC is about non harm measures that reduce high density gull numbers in Balbriggan). Obviously, the State in whatever organisation had responsibility decided that community protection of citizens was more important than the protection of gull species. The broad level of protection of gulls was materially qualified in the European Communities (Wildlife Act, 1976)(Amendment) Regulations, 1986. Under these regulations

where a Minister is of the opinion that a species referred to in the First Schedule is a threat to public health and safety she/he may declare for the purpose of preventing disease or injury that the species listed may be captured or killed. The three gull species referred to in the 1976 Act are again listed as the Dept./NPWS and the Minister were satisfied that gull species were a threat to public health and safety. As a consequence, their numbers needed to be reduced to prevent disease among individuals and as a consequent among communities and also injury to individuals. There is no doubt that in the decade between 1976 and 1986 the evidence available to the Dept./NPWS and relevant Ministers was such that such protective measures were necessary for citizens throughout the country. Gulls were clearly not protected ahead of citizens. BCC is currently in the processing of ascertaining via the legal advisor to the Consultative Committee established by Minister Madigan when, if at all, was this protection of gull species legally removed. The Irish Statute Book lists just a single amendment to the Act in respect of a species listed in the First Schedule to the 1986 regulations, the species is the bullfinch. This has prompted our inquiry as gull species are not referred to in similar regulations as far as we can ascertain. Hence, what, if any, is the legal instrument by which the Dept./NPWS continually state that gull species are protected?

It is a fact that the evidence that gull species, especially, herring gull, are a threat to public health and safety has increased considerably in recent years. Substantially more than was available in 1986 when a Minister legally declared them to be a threat to public health and safety. The reality of high density urban gull had not emerged with significantly greater health and safety risks. Yet at the current time, gulls are not now seen by the Dept./NPWS as threat to public health and safety, except in a limited number of cases where a limited licence has been granted and only for safety reasons and only in Balbriggan. In BCC's view it is truly impossible to reconcile these decisions by the same institutions.

The Dept./NPWS has issued individual licences up to recent times where applications were made that gulls were accepted as a threat to public health and safety. Clearly, the Dept./NPWS granted individual licences up to recently and thereby accepted that gull species were a threat to public health and safety. However, they constantly refused to take the logical step and apply the evidence presented that merited these licences to wider geographic areas. No doubt similar evidence was available in areas of high density gulls. One of these licenses granted on health and safety grounds was granted in Balbriggan but the Dept./NPWS steadfastly refused to grant a derogation for similar reasons to Balbriggan. (We note that in recent months the Dept./NPWS has suddenly dropped the public health reason from individual licences. BCC is to follow up this change of policy. Why the sudden change when the evidence is even more compelling?)

3.14 Conclusions - Integrity of overall decision making

It is a standard requirement in the application of Government schemes, and entitlements under such schemes that there is an integrity of decision making. This means that decisions in favour of one category is fairly applied across similar applicants. Also that a similar balance is applied to all evidence submitted in making decisions. Such requirements rule out bias, unfair application of pre-existing criteria, and/or indeed entrenched historic positions that seek to ignore changed circumstance and evidence of such change and the needs it engenders.

The annual Derogation decisions by relevant Ministers in recent years list three bird species as being a threat to public health. These are hooded crow, magpie and feral pigeon. BCC has been studying international research, research based papers and policy documents mainly in Europe but also in America and North America. The evidence is that the two most prevalent bird species that have negative implications for public health in its widest sense are feral pigeons and gull species, particularly urban-living gull colonies – the latter globally and

incontrovertibly implicated in the dispersal of Antimicrobial Resistance (refer to expert advice to the Dept./NPWS/CC in February and April 2020 and the legal opinion regarding the evidence of AMR in gulls provided to the Dept./NPWS/CC in August 2020. The magpie and hooded crow while mentioned appear to be of a materially lesser risk to citizens than the feral pigeon or gull species. This begs the question why are gull species not included alongside the three standard/recurring species that are included in the Derogations. We know that landowners or their agents were the two groups mentioned in the first iteration of the PCP and no doubt both groups have presented evidence for the inclusion of these three species. (We will of course be seeking this evidence in due course).

BCC once again urges the Dept./NPWS to act on the Irish and the international evidence that has been provided since 2016 and verified by expert bird conservation opinion (Peter Rock, CC meeting 2 in February 2020), zoonosis and medical/health expert opinion (Associate professor McMahon UCD and professor Morris NUIG) in February 2020 and April 2020, and expert legal advice in August 2020 which confirmed that there are clear grounds for proportional derogations in the case of urban seagull colonies, under the provisions of the Birds and Habitats Directives.

4. Transparency of process and decisions and an appeal mechanism, and an appropriate and essential default position “in the interests of public health and safety”

4.1. Historically, as far as BCC can identify, there has been no transparency with regard to the Derogations Public Consultation Process (PCP), the correct legal threshold to be met for the granting of a derogation, or indeed with regard to the evidence-bases and decision processes that yield species by species derogations decisions and the eventual State-wide Declarations.

In our view, given that what is at stake in the Derogations process is State-wide public health and safety and air safety, this absence of transparency is most inconsistent with Government norms on matters of such importance to the well-being of the population, and as such – again in our view - is a totally unacceptable way of conducting such business.

4.2. We propose, and indeed we are making separate recommendations to the Minister and to the Secretary General, that standards for comprehensive transparency are applied forthwith – i.e. to this and future PCPs - to all stages of the Derogations Process from the Public Consultation Phase – setting out the legal decision threshold that is being applied to species decisions and whether to derogate or not, through the evidence gathering and assessment phase, and the decision phase itself, and that a comprehensive Report be published setting out the detailed evidence basis and the criteria applied to each decision whether or not to derogate.

4.3. BCC has noted that there is no provision for an appeal against a decision of a Minister, and indeed that the timing of the State-wide Declarations is not at all conducive to appealing decisions that have a bearing on the breeding season and the potential for nest/egg removals. This is another imperative reason, in our view, for earlier notice of Derogation decisions.

4.4. We believe that there must be an appeal provision open to the public, a mechanism which would be supplemented by the transparency and reporting requirements as set out above, and which would see timing of the derogation decision announcements such that an Appeal and Redress process is supported within the natural time constraints of the general breeding season for bird species on the Third Schedule of the 1976 Wildlife Act (Amended) (i.e. species likely to be considered in derogations) – viz. early to late Spring.

4.5 As is patently clear, Ministers are asked to sign Regulations that have a direct and material

bearing on the public health and safety of all citizens State-wide. In our view, comparison with any other Department or Government Agency that is concerned with policy and/or operational matters that are concerned with national public health and safety shows that they are subject to and obliged to comply with very high standards of transparency – and usually with Oireachtas oversight and scrutiny, and formal appeal and redress mechanisms. In light of our experience with the Dept./NPWS since 2016 on the urban seagulls issues – such an oversight and transparency regime is necessary for the Wild Birds derogation process.

Also, given our direct experience with the Dept./NPWS since 2016, in our view, there is an essential need for implementation of strong and comprehensive transparency standards and an appeals mechanism – to the Minister – where any member of the public has a serious concern about or an objection to any derogation decision in respect of any wild bird species.

4.6 **An essential default position that affords overriding priority to public health and safety:**

In general, and most importantly in our view especially if there is to be a continued absence of transparency in relation to the 2021.22 derogation decisions, in the face of verified evidence, expert opinion and unambiguous legal advice - overriding priority must be given to matters of public health and safety - as catered for in the Wildlife Act 2000, and in the absence of the implementation of the 2011 Wildlife Regulations, the latter which when implemented purports to construe the Wildlife Act 2000 in its provisions, in particular Section 59 with states that

59.—Nothing in Part II, or section 51, of the Principal Act shall make unlawful any thing which is done pursuant to and in accordance with a licence granted in that behalf by the Minister for the purpose of preserving public health or public safety, including air safety. Saver in interest of public health and safety.

* the Principle Act is the Wildlife Act 1976

In our view, this is a clear and unambiguous statement in Primary Legislation that **the Oireachtas decided** to specify – in the context of Wildlife and derogations – that public health and safety has overriding priority and that the Minister has the ultimate authority in the pertaining matters. In our view, the Dept./NPWS continues to make public health and safety subordinate to bird conservation considerations – essentially disobeying the will of the Oireachtas, to the sever detriment of citizens. Furthermore, in the context of the EU Birds and Habitats Directives and the provision at Article 9.1.a) for derogations “in the interests of public health and safety” we make the points that:

- a) The EU delegates authority to all member states under subsidiarity provisions to make their own determinations on all matters pertaining to public health. This fact was and is clearly evident from the way Member States chose to address the Pandemic, and from the way Member States have addressed threats such as Foot and Mouth disease and the continuing threat from Bird Flu’. This delegation of public health matters to Member States is clearly reflected in the provisions of Section 59 of the 200 Act, and in the unconditional authority vested in the Minister.
- b) The fact that there is not one single case in ECJ case law since the Birds Directive came in in 1979 where the Commission has challenged any Member State in respect of controls on bird species under Article 9.1.a) is a very clear indication, in our view, as to national authority on public health matters, and the acceptance by the Commission of the autonomy of Member States on matters pertaining to public health and of the overriding priority of public health and safety as an unchallenged policy imperative.

- c) Further to a) and b) above the Dept./NPWS has accepted since 2017 (Balbriggan) in the case of high density urban seagull colonies that there are no alternative solutions to nest/egg removals in high density colony situations,; this position was also verified by expert advice to the Dept./CC in April by UK gull expert Peter Rock (quoted in BCC's 2017 Community Report) when he stated as follows (CC minutes have still not been published contrary to an assurance to BCC from the Minister in February 2018 that they would be published):
- i. Noise is the number one issue across the UK in high-density urban seagull colony situations
 - ii. Use of spikes, nets, gels, scary balloons, fake hawks, real hawks and sound alarm devices is a complete waste of time, money and other resources as they will not succeed in deterring seagulls or in dealing with the noise issue
 - iii. "By all means keep them (gulls) of schools and hospitals" – the CC chair later said BCC had taken Mr Rock out of context, but we do not accept that assessment and our repeated request that it be revisited with Mr Rock and "put into context" has not been acted upon
 - iv. And very importantly, Mr Rock stated that he disagreed with the RSPB that urban seagulls could be a refuge or a restocking resource for replacing lost numbers in seaward habitat; the species has discovered a safer, warmer, predator-free (almost) breeding conducive environment in urban areas and urban-living species do not revert to seaward living, and indeed generally do not mix with their seaward cousins. This fact is self-evident in communities being compelled by Dept./NPWS policy and inaction to allow urban seagulls to breed on our homes, schools, hospitals et al.

In our view and in our lived experience, Rocks expert views are correct. Point iv) means that there is no viable conservation argument for allowing urban seagulls to proliferate freely and unmanaged – not even as a hope that seaward numbers can be replenished from urban living colonies. And as this is the expert opinion, if the Dept./NPWS continue to refuse to act on and manage urban seagull colonies, it is knowingly compelling large urban communities to accept and live with uncivilised conditions and serious public health and safety risks, including risks of injury and disease.

5. A list of specific attachments that accompanied this submission document for information and evidential purposes – plus a brief description of the relevance of each attachment.

5.1 Balbriggan Community Committee (BCC) issues of serious concern with this PCP process:

- Email 7th Jan 2021 from BCC to the Dept./NPWS in response to theirs of 30th December; This email sets BCC's concerns regarding this PCP process.

BCC Comment: No acknowledgement or reply received from Dept./NPWS despite serious concerns and objections raised. This is the reason BCC is submitting to the PCP under protest.

- Email 30th Dec 2020 from the Dept./NPWS purported to respond to BCC emails of 21st and 22nd Dec.

BCC Comment: this email from the Dept./NPWS is, in our opinion, obfuscatory, evasive and disingenuous – it does not answer our questions and concerns – specifically as to what is the legal threshold that will be applied by the Dept./NPWS in making decisions about any given species on whether or not to derogation to protect citizens – legal advice on August 11 2020 and a close analysis of the legislation indicates strongly that the Dept./NPWS has used an illegal decision threshold since 1986 and has ignored the Birds Directive by not implementing the 2011 regulations. Furthermore, on the 30th Dec. the Dept./NPWS posted a Press release on the Gov.ie site 14 days after the initial Post

notifying the PCP was made on the NPWS Web Site. The dept./NPWS neglected to give BCC a heads up in this email on the same day as the “Press release”

- *2 emails 21st and 22nd Dec. the first of which crossed with a notice to BCC incorrect email used by the Dept./NPWS) of the Web-post regarding the PCP on NPWS site. We said we “welcomed the fact that a PCP was being done open to the public” – however our welcome was very premature when the facts about it are read in our email of 7th Jan. Much of BCC’s proposal regarding Transparency and an Appeal system at section 4 above arises from the pattern of non-transparency of and regarding this PCP process, and that fact that the Dept./NPWS (every year) leaves everyone waiting until 1st May to see its decisions on Derogations, with no report on the process or outcomes and no transparency regarding the evidence weighed or the reasons for any decision to deny a derogation. In our view, the Dept./NPWS way of conducting business in these regards is unacceptable.*

5.2. BCC’s concerns regarding a very long delay in a response from the Dept./NPWS to follow up questions submitted to the ongoing Legal Module of the CC dated 2/3 Nov, 16th Dec. – and this follow up was agreed in writing with the first Former Chair of the CC on 22 Oct before he departed and with the Secretary to the CC on 3rd Nov.

- email dated 2 Nov with substantive follow up questions to the CC legal Module
- email dated 3 Nov with an amended attachment to the 2 Nov email
- email dated 16th Dec with substantive follow-up questions to the CC Legal Module
- email dated 18th Jan to the Dept./NPWS from the second former Chair urging the Dept./NPWS to provide a response to BCC’s submissions to the CC legal Module

BCC Comments: BCC has contended, with the support of our elected representatives cross-part, and with independent legal advice, since 2016 that the Dept. /NPWS has not been obeying the law in its Derogations and Licencing. The Dept./NPWS has ignored our contention. In the expert Legal Opinion, given to the Dept. and the CC on August 11th 2020, the Barrister agreed with BCC that the legal threshold being applied by the Dept./NOWS when making derogation decisions is “materially higher than what is provided for in the Birds Directive. In our view, this legal fact continues to have a detrimental effect on the protection of Irish citizens. Importantly, several other points made by the Barrister brought other aspects of the Dept./NPWS policy and legal positions into serious question – all of which has a direct bearing on Derogations and the protection of citizens. Hence the range of follow up questions and evidential material submitted (as agreed with the former Chair in writing) for the opinion of the Barrister. The CC Secretary confirmed to BCC in writing that he was submitting this material to the Barrister. The first phase draft opinion was turned around in just 3 weeks, with material submitted in mid-July and the reply received from the Barrister on 11th August. In is now over 2 and a half months and over one month respectively since BCC submitted our follow up material. We notified the Dept./NPWS in December that we needed the responses to inform parts of our submission to this PCP. In its email above 30th Dec. the Dept./NPWS stated – again very disingenuously in our view - that BCC “could submit legal matters to the PCP”; several of our questions that we asked in the follow up phase of the Legal Module are of a direct bearing on the Derogations process and decisions.

BCC regards it as essential that all of our follow up questions and evidential material to the CC legal modules are addressed and answered asap to quote the second former CC Chair, and that all of the legal advice since August 11th 2020 has duly informs the derogation process and decisions. In particular, several aspects of BCC’s legal questions are core to the issue of overriding priority being due to public health and safety – a priority status that NPWS continues to deny to the public health and safety issue. Based on our experience of

the NPWS since 2016, it is our view that all related matters need to be independently examined and monitored at the highest levels in the Dept.

- 5.3 Attachments – the First Draft legal Opinion on urban seagull evidence that was provided to the CC on 1st September. Also attached in emails is the evidence provided to the Barrister who is advising the CC on the legal matters.

BCC comments: Note in particular but not exclusively sections 5.38, 6.3 and 6.4. BCC is convinced that these opinions and conclusions strongly indicate that the Dept./NPWS has continued to hold an untenable position and to implement a seriously flawed policy – to the detriment to communities negatively impacted by high density urban seagull colonies.

Furthermore, BCC is convinced that the answers to the legal issues described in 5.2. above will further demonstrate a number of failures in legal compliance on the part of the Dept./NPWS – e.g.

ref 2.2. Member States must take the requisite measures to maintain the population of bird species 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.

*BCC believes that this legal obligation on the State is at the nub of the urban seagull issue and we have asked several questions in this regard on the follow up material that is being delayed by the Dept./NPWS. The position of conservation groups is that derogations are not legally permitted unless 2.2. (including research and data gathering) is completed by the State. Little if any research has been completed on urban seagulls and the traditional Censuses have never made any attempt to count urban living species for example. This ‘position’ essentially seeks to make the interests (including their health and safety) of entire urban communities compelled to live with high-density urban seagull colonies subordinate and inferior to the interests of urban living seagull colonies that didn’t even exist in the 2002 Seabird Census figures – which claimed that the total number of urban nesting pairs of Herring Gulls in the Republic in 2002 was 209 pairs nationally, the 2018 Roughan O’Donovan Drone Camera study sponsored by Fingal County Council filmed **451 nests in three small areas of Balbriggan, Howth and Skerries. The total in Balbriggan was 232 nests in an area 1/7th the size of the Derogation zone – 6 weeks after the Balbriggan derogation had been applied in some areas – 199 nests had been removed before the Drone Scan. In other words the RO’D Study proved very high concentrations of seagull nests existed in very small areas – and in Balbriggan’s case, including on 3 schools, a large Supermarket and four pub/restaurants.***

The Dept./NPWS effectively ignored that Camera study in 2018 and since – otherwise, they were duty bound to amend the Balbriggan derogation a/ to widen the zoned area to include the School that was filmed with 21 nests on the roof, and to include public health in the Derogation reason based on the AMR evidence at their disposal since 2017, since legally validated in the opinion in August as a reason to derogate on public health and safety grounds – on the abundance of caution basis applicable to AMR and high-density seagulls where schools are concerned as advised to the Dept./CC in April 2020 by Professor Morris NUIG EPA AREST Project.

In regards to the above and the current derogation process and the eventual

decisions – BCC requires transparency from the Department about all of the evidence assessed in the process for all other bird species – including those subjected to killing State-wide.

- 5.4 Attachment – Roughan O’Donovan Camera Drone Study Report December 2018 – Balbriggan, Howth Skerries – small areas filmed to identify and count nesting seagulls in July 2018. Cost €15,000, time to produce the report 5 months – scale of counting task was grossly underestimated – as reported by the Consultants to Fingal County Council.

BCC makes two comments viz a) this RO’D study provided hard evidence of high density urban seagull colonies in relatively small sample areas in three towns, b) it cost €15,000 and took over 5 months to report. Questions: Are the Dept./NPWS or conservation interests claiming that it has to scale such a study up in budget, effort and time in all urban areas nationally, before protection can be given to the impacted urban communities. In BCC’s view, that is patent nonsense and the current stand-off on this issue needs to be put aside to protect public health and safety with a proportionate Derogation as proposed at 2 above. Any failure to Derogate now means impacted communities are having their health and safety continually compromised and are effectively being used as agenda ‘pawns’. In BCC’s view, this must stop now, failing which political instruction is necessary to insist that the Department prioritises the legitimate interests of public health and safety in impacted communities.

- 5.5. Link to the 2018 5-year Review of Derogations: -

<https://www.npws.ie/sites/default/files/general/aniar-final-report-060918.pdf>

In September 2016, the Dept./NPWS wrote (letter attached) to BCC stating that this 2018 Review “would address all perceived threats”. It did no such thing. On the contrary, on the urban seagull issue, it recommended a further Steering Committee (which became the current Consultative Committee in June 2019) to research urban seagull issues and inferred that the Balbriggan Derogation was in conflict with the Birds Directive. Furthermore, in the context of derogations, this Review Report placed huge emphasis on the law and compliance with the Birds Directive and made it clear that its considerations and recommendations were all framed in the legal context and towards legal compliance. The Report claims at section 2.5.1 that the legal position in Ireland was/is as follows:

2.5 Situation in Ireland

2.5.1 Implementation into Irish law of the Birds Directive and the Article 9 derogation

In Ireland, the provisions of the Birds Directive are implemented through the Wildlife Act 1976 (as amended, hereinafter “the 1976 Act”), as well as through secondary legislation. This includes both the European Communities (Wildlife Act 1976) (Amendment) Regulations 1986 and the European Communities (Birds and Natural Habitats) Regulations 2011.

BCC assumes that the Dept./NPWS instructed the consultants who authored the Report that the legal position was as described above – i.e. that the Review process did not investigate what was/is the legal position. BCC has maintained since 2016 (with the support of all of our TDs – i.e. legislators - cross-party, that the Dept./NPWS has not been obeying the law, and rather, has been pursuing an á la carte approach to the Law. The Dept./NPWS has refused to answer questions in these regards.

Jumping forward to the CC set up on foot of this Review and specifically its Legal Module. The Legal Opinion provided by the Barrister hired by the Dept./NPWS agrees with BCC’s views on the Dept./NPWS’ non-compliance with the law. Refer in the Opinion to:

3.14. Thirdly, the reference to ‘threat’ in the 1986 Regulations seems to be a higher threshold than

- Article 9(1) of the Birds Directive which refers to ‘in the interests of public health and safety’.*
- 3.16. It seems to me that the national system for allowing derogations under Article 9 of the Birds Directive is through State-wide declarations made by the Minister pursuant to the Act.21 For the reasons outlined above, I have doubts that the provisions in s.22 of the Act and the 1986 Regulations are inconsistent with Article 9 of the Birds Directive. For a start, the Act is national legislation which preceded the original 1979 Birds Directive (Directive 79/409/EEC) and, while it has been amended since then, appears to be concerned with a domestic regime for wildlife protection (including wild birds).**
- 3.17. This is fortified by the fact that Article 9 of the Birds Directive would appear to be transposed in any event by Reg.54 and Reg.55 of the 2011 Regulations and it would be otiose to include these provisions in the 2011 Regulations if the derogation regime had been adequately transposed in the Act and / or the 1986 Regulations.**
- 3.18. Reg.55, which applies to derogation licences for birds, provides that any person may apply to the Minister for a derogation licence from complying with the requirements of the provisions of Reg.53.**

That is to say that the Opinion is that the 2011 regulations have not in fact been implemented, and the decision threshold being applied by the Dept./NPWS in making Derogation Declarations (the 1986 Regulations – “represent a threat to public health and safety” is not compliant with and “materially higher” than the Directive’s threshold “in the interests of public health and safety”).

Therefore, in our view, it seems that the legal premise stated and used as the basis for recommendations the 2018 Review – and presumably provided as ‘fact’ to the consultants by the Dept./NPWS - was not in fact correct.

BCC has addressed these and several other related legal matters in the Derogations Declaration context in follow up questions and material (2nd/3rd November and 16th December last) submitted back to the Barrister who is advising the CC. We are still awaiting a response to this material from the Barrister or from the Dept./NPWS. On 18th January, the newly appointed (replacement) Chair of the CC “urged” the dept./NPWS to provide us with a timeline for responses to our material – and then informed us of his decision to resign as Chair, 13 days after we were notified of his appointment.

We are still awaiting a response to our questions as CC members to the Barrister hired by the Dept./NPWS to advise the Legal Module of the CC. The first former Chair of the CC agreed with us in writing that follow-up questions and material to the Barrister should be accommodated. The Secretary of the CC informed us on 3rd November that he would send our material to the Barrister. Despite several requests for a response, we have not had any reply from the Dept./NPWS.

The Legal Matters being question are of core relevance to the Derogation process, and therefore to this PCP. We informed the Dept./NPWS in December that we required the responses to our questions towards informing this submission to the CC. On 30th December the Dept./NPWS wrote to us stating that “we could submit legal material” to the PCP. On January 7th, we wrote to the Dept./NPWS with several concerns about this PCP process itself, and legal matters surrounding it – we did not receive any response or acknowledgement.

5.6 Copy of BCC’s December 2017 Community Report – attached.

Our community volunteered to produce this 104 page report following the granting of the Balbriggan Derogation in May 2017. We made a considerable effort to report use of the derogation, and also to flesh out all of the evidence and ongoing issues with urban gulls in our estates, schools, businesses and sports clubs. As in 2016, we issued repeated invitations in writing to the Dept./NPWS to visit our community and meet the people affected by the issue.

The Dept./NPWS did not accept any of our invitations – although the former director of Services from Fingal County Council did spend a half a day in our community meeting people and seeing the issues first hand. He went on to commission the ROD' Camera/Drown study in Balbriggan, Howth and Skerries (ignored by the Dept./NPWS) and also commissioned and delivered 9,000 leaflets (and an on-line bulletin) throughout Balbriggan dealing with food waste management and non-feeding of seagulls.

In October 2017 the Dept./NPWS wrote to us stating that “it looked forward to receiving our report and would meet us to discuss it”, When they received it they reneged on this commitment and said they were referring it into the 2018 review instead. The 2018 review essentially ignored our report and put it into an Appendix stating that it did not necessarily reflect the views of the authors or the Dept. NPWS.

The CC went on to take evidence in 2020 from Peter Rock (UK gull expert) – whose published material was heavily quoted in our report, and from professors McMahon (DCU, zoonosis and wildlife) on Antimicrobial Resistance, and from Professor Morris (NUIG, EPA ARST project on AMR).

BCC waits to see whether the 2021.22 derogation process – four years on from our Community Report and two years on from the 2018 review that was “to address all perceived threats” heeds the mountain of evidence and international precedents that prove a need for protection of communities impacted by high density urban seagull colonies.

5.7 Copy correspondence between the Dept./NPWS and the HSE December/January 2016/17 attached.

On 8th December 2016 the Dept./NPWS met BCC in Smithfield offices. The Dept./NPWS acknowledged that other EU countries including the UK had been dealing with the urban seagull issue “for years”. Official insisted they were obliged to comply with the Birds Directive and said they had written to the HSE – per attached.

The Dept./NPWS had taken a position in May 2016 that “it is not a competent authority in matters of public health and safety” – despite having issued Derogation and Licences for 35 years within a legislative scheme that includes prosecution and penalties for non-compliance with such licences. The Dept./NPWS, in our view, took this position to seek to avoid responsibility for addressing the “large/complex” urban seagull issue and sought (in PQ responses) to shift responsibility onto the Local Authorities and/or the HSE/Dept. of Health. Then Ministers for both Local Government and for Health wrote to our TDs specifically placing the responsibility – correctly based on 35 years of precedents – back onto the Dept./NPWS. The Dept./NPWS continues issuing individual licences on public health and safety grounds until 2019 – and since then these licences only cite “public safety”. However, the Dept./NPWS has to continue issuing Derogation Declarations on both public health and safety grounds every year – claimed by the Dept./NPWS to be based on consideration of the evidence – despite its self-declared non-competence in public health and safety in PQs in 2016, and also despite its assertion in 2016 in PQs responses to then TD, current Minister O’Brien that it completes the Derogations declarations in house, without any reference to external organisations, bodies or expertise. In our view, this is clearly a nonsensical position adopted by the Dept./NPWS to evade its responsibility for addressing the urban seagull issue – and the passage of time from 2016 to 2021 with continued prevarication and no action towards protecting Irish citizens impacted by urban seagulls speaks for itself.

Returning to the HSE correspondence, a reader will see that the Dept./NPWS relied on the HSPC position that urban seagulls do not pose a threat of widespread of contagious disease to

the Irish population. This was the HSPC setting out that the urban seagull issue was not within its remit, and such a bar height for intervention was and is ridiculous – not just in the urban seagull context, but in the context of all species and all Derogations routinely granted for 35 years+. Most notably, the Dept./NPWS chose to ignore the remarks of two Public Health doctors who referred – in the urban seagull context – to “the wider definition of public health” and the “potential role of the Local Authorities” – i.e. the exact policy and operational model that has existed in all neighbouring jurisdictions “for years” to again quote the Dept./NPWS official to BC at our meeting on 8th December, and to again point to the Dept./NPWS attempts to shift responsibility for the urban seagull issue onto the Local Authorities – without addressing its Departmental responsibilities for national policy and resources on the issue.

The truth of the matter – based on the evidence that is documented and on the record, is that the Dept./NPWS has no regard for Irish citizens impacted by the urban seagull issue and is continuing to evade its responsibilities on the issue.

5.8 Copy letter September 2019 from the Dept./NPWS to BCC (3 separate pdf pages).

This letter speaks for itself, as does the intervening timeline filled with delay, prevarication and zero action on the urban seagull issue in the interests of public health and safety.

Not its reference to “the legal position” as set out in the first piece of correspondence from the Dept./NPWS to BCC on 1st July 2016 ref. 5.9 following.

As no seems to be clear from the independent and expert legal opinion hired by the Dept./NPWS to advise the CC and provided on 11th August last the claimed “legal position” is not in fact a true position. The Birds Directive is not being applied, in particular the legal threshold that the Dept./NPWS uses in its decisions, for all species, species by species, circumstance by circumstance, as to whether or not to provide protections to Irish citizens – is not legally compliant with the Birds Directive, is in fact “materially higher” and is therefore illegal and clearly to the detriment of Irish citizens when a desktop comparison of official evidence across NI/GB and Northern Europe proves that Irish citizens alone – in all neighbouring jurisdictions have been and continue to be denied protections that are legally proscribed in the Birds Directive.

5.9 Copy email from dept./NPWS 1st July 2016.

This is the first response received by BCC to our non-prescriptive request to the Dept./NPWS for urgent assistance with serious urban seagull issues.

The legal opinion provided to the Dept./NPWS and its own CC on 11th August 2020 seems to very clearly expose the Dept./NPWS’ claimed “legal position” of being governed by and of adherence to the Birds Directive as being false and untrue.

It is noteworthy that this response does not acknowledge the uncivilised conditions being imposed on communities by proliferating urban seagull colonies, nor does it consider or offer any assistance to communities. Indeed this has been the Dept./NPWS claimed and continued position since 2016 – with the single exception of the partial Balbriggan Derogation in May 2017, a Derogation which BCC is convinced was only achieved due to the political determination and courage of the then Minister Heather Humphreys. Notwithstanding the Minister’s instructions, the Dept./NPWS used an old map to draw a nonsensical derogation zone which excludes Balbriggan sites – including a major school with 21 nests and 51 chicks filmed on it in the 2018 ROF camera/drone study, confined the reason for the Derogation to “public safety” and precluded the main reason which is “public health” – thereby undermining the urgency of the derogation, and issued a press statement stating that” the Local Authority

would be doing the work” – knowing full well that this was not the case. The Local Authority had to issue a counter-statement that it had no involvement in the matter pending a national policy being devised.

- 5.10 The above are just a selection of key documents and communications over almost five years now. We will leave it to the reader to assess the truth of the matters.

In conclusion of this submission, BCC, notifies the Dept./NPWS as follows:

in the light of the manner and conduct of this so called “Public Consultation Process, the non-response to our letter raising several issues dated 7th January, and also due to the facts that a) legal opinion last August seems to have agreed with our view that the Dept./NPWS has not been obeying the law when making Derogation Declarations – i.e. the Birds Directive – despite its claims to be legally compliant, and b) that we still have not received any response to our follow up material for the CC’s legal module (submitted on 2/3 Nov and 16 Dec last) on an agreed in writing basis) with the former CC Chair and the CC Secretary, and c) considering events since 2016 up to including the resignation of a replacement Chair of the CC after just 13 days in the post, and without even convening a single meeting with CC members– will copy this submission, with a formal complaint, to the Secretary General of the Department of Housing, Local Government and Heritage, to Minister O’Brien and Minister of State Noonan, and a request that NPWS handling of the urban seagull issue since 2016 be independently examined at the highest level, in particular its refusal to protect Irish citizens on an equal basis with millions of fellow EU citizens, and millions of our neighbours in NI/GB (Brexit notwithstanding)– under the Birds Directive.

****** ends here, 22 pages plus attachments to covering email as described in the submission.**

Consultative Committee (CC)
to review negative impacts of seagull colonies
in urban areas

Minority Report

of the Balbriggan Community Committee
to be read in conjunction with
the CC's First Interim Report

To the Minister
cc Secretary General
Department of Culture, Heritage and the Gaeltacht (DCHG)
23 Kildare Street
Dublin 2

Monday 20th April, 2020

Minority Report (MR)

of the Balbriggan Community Committee (BCC)
to be read in conjunction with
the CC's First Interim Report (CCFIR)
(delivered to the Minister on 17th April 2020)

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Appendices (Page 36 – total of 9 pages)

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 - 1 BCC letter to Secretaries General of DCHG and Dept. of an Taoiseach
 - 2 Natural England Chair's Letter (Policy) to UK Secretary of State
2. Questions prepared by BCC by arrangement with the CC Chair for a planned discussion of the NE policy with the Chair of NE

Preamble

Like the rest of the country, the Balbriggan Community is in a quiet state of shock and no little trepidation regarding the sheer magnitude and severity of the COVID-19 crisis for our people and our nation which, in truth, is impossible to grasp.

All kinds of heretofore plans, objectivities, priorities, and pressures are cast in a very different and sobering light in the shadow of the existential threat to our society that is posed by the virus. We must wait and hope to see a change for the better soon and send all of our good will and support to those serving our nation on the front line of this momentous struggle.

For substantive reasons set out in this Report we as a committee representing our community were not in a position to accept the CC's FIR as submitted on Friday 17th April. We are therefore compelled to submit this Minority Report which should be read in conjunction with the CC's FIR.

In submitting our Minority Report we seek to achieve priority for the needs of communities negatively impacted by the urban seagull issues, thereby aligning Irish policy with the principles and policies routinely applied in all of our neighbouring jurisdictions. We also submit our Report for reasons of thoroughness, completeness, and in order to respect and reflect the effort and commitment invested in the project in good faith by all concerned since June 2019.

The Balbriggan Community Committee. *

Tom Cardiff, Gerry Coffey, Don Costigan, Gene McKenna, Dave Sorensen, Tony Everitt, Peadar O'Kelly
Email addresses and c/o Postal Address already provided.

*** (*Ink signatures were previously provided by BCC on documents and correspondence and cannot be given on this occasion due to compliance with COVID-19 social distancing measures.*)**

1. Executive Summary:

1. BCC acknowledges and respects the Chair's efforts to make progress on the urban seagull issue. We are very disappointed to have been obliged to submit this MR. As the Chair will have reported his assessment of matters addressed by the CC since June 2019 in the CCFIR, we are not covering the same ground here. The Chair has been aware since early February of our divergence, and of our need to submit this MR due to the continuing absence of any real progress on the issue for citizens.
2. Taken together, **Key Background** set out in section 2, the summary of **Negative Impacts of Urban-living Seagull Colonies on Communities** in section 3, and our **Points of Concern with and Divergence from the CC** in section 4 convey the reasons for which we are compelled to submit our MR.
3. The CC was set up in June 2019, following a major Review of the Derogations Process in 2018. Its brief is to review the negative impacts of urban-living seagull colonies on communities and to make recommendations. After nine months of CC work, in our view, impacts on communities are neither properly understood nor acknowledged in the CC, and have only been lightly considered. Having taken four years to reach this point, BCC has not seen any evidence of urgency in DCHG or in the CC, other than from us, towards achieving meaningful mitigations for communities in a timely manner.
4. It would be wholly counter-intuitive based on our detailed knowledge of the issue, and on four years to date of work towards a proper public administration response to the issue, for us to sign the FIR. In our view its recommendations in the fall seriously short of meeting the urgent '**here and now**' needs of citizens impacted by urban-living seagull colonies. Specifically, the overriding priority of public health and safety is not articulated, and therefore we believe, not accepted. Our sense is that implementation of the FIR recommendations will stretch out far into the future and further delay necessary mitigations. In fact, the FIR does not even commit to mitigations happening at the end of its recommended processes and actions – while the urban seagull problem continues to escalate.
5. The next opportunity to mitigate in the interests of citizens arises on 1st May in the State-wide Declaration. Another opportunity will not arise until May 2021. In our view, the 2020.21 Declaration should be used to substantively mitigate negative impacts on urban communities.
6. Therefore, based on our experience to date in the CC, on what, in our view, remains lacking in the FIR, on recent statements to BCC by the Chair that “this is a long term issue”, and on DCHG's handling of this issue since 2016, it seems clear to BCC that continued prevarication and delay, potentially for several more years, is what can be expected. This is not justifiable or acceptable.
7. As an MR essentially focusses on points of concern and divergence, we realise that we may seem to be overly negative. If that is so, it is by dint of the circumstances that exist. We have, therefore, made twelve carefully considered evidence-based recommendations in section 5, including our rationale for each one. We believe our recommendations are positive and comprehensive. They were provided to the Chair on 19th March for sharing with the members of the CC.
8. The FIR addresses long-term development of policy that **may** include e.g. research elements, targeting of hotspots and serious impacts from seagull colonies on communities and on other species, and holistically

informed conservation measures. BCC fully understands and respects the strategic approach being considered. This work can, we hope, ensue at a pace commensurate with resources and priorities in DCHG and other organisations that might be involved. **Many urban communities have very serious and escalating issues in the ‘here and now’ that are not being acknowledged in the CC or in the FIR.** This is unacceptable from a human perspective and needs to change now, not in one, two or more years’ time as seems likely to us based on the FIR.

9. In making our recommendations to you and also mindful of ideas discussed in the CC, we are acutely conscious that resources will be hugely constrained in coming years due to the unprecedented magnitude of the COVID-19 crisis, on top of many pressing national priorities. The major economic damage to our country being caused by COVID-19 must majorly constrain resource-dependent plans. However, this does not obviate the need for addressing urgent issues that impact on citizens.
10. As mentioned in our preamble, we are proceeding with this piece of work as undertaken for the sake of thoroughness and completeness, and to respect and reflect the effort and commitment invested by the CC members and the Chair since June 2019.
11. BCC’s composite view on the issue is that it is unjustifiable and totally unnecessary to continue to compel impacted communities to continue indefinitely to live with health and safety risks and several other negative impacts from proliferating high-density urban seagull colonies. Yet such unjustifiable compulsion is the indisputable continuing default effect of current DCHG policy and the status quo.
12. We have set out in Section 6 our analysis of policy deficits in Ireland compared to the UK and the EU. The effects of the deficits are a) an urban seagull problem here that is out of control, with escalating impacts on people, and b) in our view, a continuing damaging lacuna in public administration policy.
13. In our view, the lacuna exists in large part because there appears to be a standoff between DCHG and Local Authorities on responsibility for the issue and the resources needed to address it. Unless and until this lacuna is addressed, a General Licence is the minimum needed to enable communities in areas with high density colonies to protect themselves. A case-by-case system will not work unless Local Authorities are involved in providing managed services where high density colonies have established. In fact, a case-by-case system without Local Authorities will guarantee continued un-resisted and unmanaged proliferation of urban-living seagull species, escalation of the associated problems being caused, and a continued denial of protection to communities here compared to all neighbouring jurisdictions.
14. In a separate research strand on this issue, BCC tracked the development of the new seagull management policy for England published by Natural England (NE) in Jan. 2020. We provided the policy with our considered views on it to the Secretaries General of DCHG and the Dept. of an Taoiseach and to the CC Chair on 9th March 2019 - . See Section 7 and Appendix 1.
15. Developed in partnership by Defra and NE in eight months, the policy sets out eight principles, the first of which is **“the overriding priority of public health and safety”** and it repeats emphasis on **“the protection of life and health”**. Importantly, it also distinctly separates the conservation status of urban- and rural-living seagull colonies for policy and species management purposes and it states **“there will be no limits set on removal of nests, eggs and chicks in urban areas, and a sustainable 5% limit on controls will apply in rural**

(natural) habitats". The UK Government and England has recognised and acted on the need to proactively manage urban seagull colonies on public health and safety grounds with a policy based on up to date knowledge of circumstances that seems (at face value) to be well nuanced.

16. BCC's view is that for an august national public authority with impeccable scientific and conservation credentials and competencies, the strength of NE's commitment to public health and safety should be noted and be potentially influential towards solution considerations here. At present, DCHG remains, latterly, inexplicably and (detrimentally to communities) ambivalent on public health.
17. The new seagull management policy for England relies on 'Class' licences for high-density colony situations in urban areas e.g. for Local Authorities, Pest Control companies and contractors. A 'Class' licence is in effect a 'localised' or 'multi-case' regional General Licence for competent, trusted service providers such as Local Authorities. This structure means there are not thousands of individual licences to be processed in the very short (8 -10 weeks) operating window of the breeding season. More importantly, it also means that an important service is provided on a default basis and, by design, it caters for multiple circumstances (e.g. vulnerable people, elderly, uninformed, cash-strapped schools, hospitals and businesses). The UK and EU managed services solutions rely on extensive publicity and are fully transparent.
18. Importantly, a managed services approach run by Local Authorities also ensures a very high standard of observance of legal compliance and data gathering for conservation and monitoring purposes. FCC stated repeatedly to us since 2016 that it does not intend to 'apply for a licence' and will look at this issue when DCHG produces a national policy and addresses resource requirements. DCHG clearly wants to confine its role to issuing licences – nothing has changed since 2016 in our view.
19. It seems to us that Ireland is a long way off the structure and deep organisation needed for managed services, and will remain so until the policy lacuna that exists between DCHG and Local Authorities on the issue is recognised and addressed. In the interim, a simple General Licence enabling affected communities to protect themselves is needed – a case-by-case system cannot and will not work.
20. Therefore, our first and most urgent recommendation is to ask you to consider a simple General Licence as has been used in Northern Ireland and the rest of the UK for many years. This would ***create a consistent all island interim solution and would provide a no-cost and non-harm basic level of protection*** immediately to impacted communities. The long-term strategic solution being discussed in the CC, including reference to the England model when it is explored fully and if it transpires to be useful, can ensue with appropriate priority and available resources, in the knowledge that a sensible and basic protection regime – with no harm to seagull species – is in place for the genuine needs of impacted communities in urban areas around the country.
21. BCC again acknowledges and appreciates the non-harm Balbriggan Derogation commenced in the 2017 Declaration at the instigation of Minister Humphreys. While somewhat flawed in that it leaves people to their own devices whereas neighbouring jurisdictions provide Local Authority managed services, it enables recurring nest and egg removal in areas of the town occupied by very high density seagull colonies - as were clearly shown by the FCC drone/camera study in 2018. Thankfully the Derogation continues to provide essential relief in the zoned areas. There is some evidence that continuous disruption of nesting each season is gradually teaching the seagulls to nest elsewhere and we request that the Balbriggan

provision is retained in this and coming years – until a superior and comprehensive solution becomes available.

22. BCC knows from experience that such a recurring non-harm Derogation is necessary in urban areas impacted by very high density, freely proliferating, unmanaged seagull colonies and that is why we are recommending a simple General Licence for impacted urban areas pending delivery of a better solution in the future from the work of the CC. It is unjustifiable to compel impacted communities to wait indefinitely for a future solution as the problem escalates every breeding season.
23. The unconditional commitment to public health and safety from Defra and NE in their new policy could not be stronger and should, we recommend, influence your own considerations towards your decision(s), failing which the health and safety of Irish citizens will continue to be unjustifiably compromised. If the NE model does offer a contribution towards a solution(s) here, we firmly believe that all of its eight principles (Section 7 and Appendix 1) as enunciated must apply and must not be cherry-picked or diluted as they are clearly inter-dependent and cohesive.
24. As such a policy would obviously require time and resources to be studied and assimilated, we propose that accepting our recommendation for an interim solution using a General Licence for urban areas along the same lines as used in Northern Ireland would be a reasonable, considerate, and prudent step towards providing basic protection for impacted urban communities around the country.
25. In the round therefore, with the greatest respect, we ask you Minister to direct that DCHG policy decisions regarding urban seagull colonies should attribute **overriding priority, unequivocally, to “the interests of public health and safety”** as catered for in the national and EU legislation and in line with all of our neighbouring jurisdictions’ handling of this issue.
26. We believe that the first next significant step after an interim General Licence would be that a purposeful dialogue be initiated by DCHG with the Local Government Management Agency – refer to our recommendation 2 on page 27. Our biggest concern is that this issue must not be allowed to drag on and worsen into a fifth year and a sixth breeding season with no real efforts to address it.
27. Accordingly Minister, our Minority Report is hereby submitted to you with respect and in good faith.

2. Key background

- 1 BCC formed in May 2016 to seek help from DCHG with serious issues arising from high-density colonies proliferating in our town. We received an unhelpful and derisory response from DCHG in July 2016. That response stimulated a sustained campaign with unanimous cross-party political support. BCC collected a major petition across eight housing estates and including many small and large businesses. We also consulted a number of schools (Principals, teachers and parents) all of whom support the need for a solution to the negative impacts from high density urban seagull colonies. Our community committee represents the views of thousands of people across Balbriggan. Our petition was submitted to DCHG and the Minister in October 2016,
- 2 From 2016 onwards (PQ replies, media statements) DCHG has sought to place responsibility for addressing the issue onto Fingal County Council (FCC), and indeed onto the HSE. The Ministers for DHPLG and for Health are on the record stating that the seagull issue is “primarily a matter for DCHG”.
- 3 In Sept. 2016 DCHG wrote to us stating that a Review of the Derogation Process in 2018 would “**address all perceived threats**”. We rejected this two year delay being imposed by DCHG with no interim mitigation measures.
- 4 DCHG eventually met us in Dec. 2016 and acknowledged that Ireland is years behind the rest of the UK and EU on the issue and said they had “written to the HSE” about public health and safety, but still made no offer of mitigation for citizens. DCHG subsequently cherry-picked and misrepresented the HSE response omitting references to the “wider public health dimension and Local authorities”, relying instead on absence of a general disease threat to the general public being stated by the HSE, but ignoring pointers in the same correspondence from two public health doctors who referred to “the wider definition of public health and the Local Authorities”. DCHG’s case-by-case system has dispensed public health and safety licences for over thirty years – these were not predicated on a general disease threat to the general public. The old case-by-case system is not fit for purpose for the scale of the urban seagull problem and people are being harmed by this deficit.
- 5 In Feb 2017, Minister Humphreys met the five TDS then representing Balbriggan. Feedback from the TDs was that the Minister had directed that DCHG should devise a solution in time for the May 2017 (Annual) State-wide Declaration. No information was provided by DCHG between Feb. and May, and the Dept. did not reply to correspondence from our TDs. The limited Derogation issued was for ‘public safety’ only – i.e. it did not acknowledge ‘public health’. Our TDs subsequently informed us that the eventual Derogation fell short of what they understood to have been directed by the Minister.
- 6 On 1st May 2017 DCHG granted a restricted Derogation permitting removal of nests and eggs on public safety grounds, covering parts of Balbriggan. The Derogation is somewhat flawed in that it leaves people to their own devices to remove nests whereas all neighbouring jurisdictions provide Local Authority managed services. However, it is welcome because it enables serious cases to be addressed in the prescribed areas. The aim is that high-density breeding in many areas will reduce as non-harm disruption of nesting continues each season - teaching the seagulls to nest away from people. The Balbriggan Derogation is needed on a continuing basis until the issue is under control or pending a better solution.

- 7 BCC has continued campaigning for a fuller Derogation that aligns recognition of the public health dimension with all neighbouring jurisdictions, and we continue to seek involvement of FCC to provide managed services for nest removal. This is the common operational practice for years, on public health and safety grounds, across impacted areas in the UK, including Northern Ireland, and in Europe.
- 8 In 2018 FCC commissioned a small study using drone and camera technology across parts of Balbriggan, Skerries and Howth during the seagull breeding season – the first such study in Ireland. The camera results showed high-density colonies nesting in all three towns, including large colonies on our schools. This study was provided to DCHG but was essentially ignored. Also in 2018, at the behest of local Councillors, FCC carried out an extensive leaflet drop across Balbriggan addressing issues of food waste management, non-littering of food, and non-feeding of seagulls – another ‘first’ in Ireland. BCC understands the Leaflet drop was followed up with visits by Environmental Health Inspectors to all food businesses to emphasise food waste management policy. BCC understands FCC was/is willing to develop this initiative further. In 2019 we have seen prosecutions initiated for the first time in Ireland for feeding of pigeons and seagulls in residential areas – we believe under the Public Health Acts.
- 9 In short, the Balbriggan Community, co-operating with our Local Authority, unilaterally and thoroughly undertook and carried out all ancillary activities usually demanded prior to control measures. Such actions referred to as an ‘integrated management plan’ in the new NE policy.
- 10 Our Local Authority told us that it went as far as it could with the above measures “in the absence of a clear national policy from DCHG” and pending resolution of “new resources from DCHG for the new business that would be involved”. In our view, there is clearly a serious public policy lacuna here that is preventing a proper public administration response to the urban seagull issue. It is DCHG’s responsibility to address this lacuna in our view, based on all normal Departmental policy precedents.
- 11 DCHG’s major Review of the Derogations Process (wild birds) was completed in summer 2018, and reported on 22nd Oct.. With regard to urban seagulls, this review recommended a steering group to run for another two-plus years, to review impacts of urban seagulls on communities and make recommendations. **This Review did not “address all perceived threats”** as DCHG had claimed it would in Sept. 2016, on the contrary, it further and significantly pushed out any attempt at solutions for another three-plus years. A five year timeline with no mitigation measures for impacted communities spotlights entrenched ambivalence in DCHG regarding its responsibility under Article 9.1.a) of the Directive to protect “the interests of public health and safety” and an inexcusable disregard for citizens.
- 12 Despite further intense political representations seeking action, DCHG proceeded to form the “Consultative Committee” to run for a further two-plus years. Following a meeting on 17th Oct. 2018 – five days before the Review Report was published - with the five TDs then representing Balbriggan, BCC was invited by the Minister to serve on the CC. This CC was to “**meet soon and submit an Interim Report with recommendations in time for the 2019 Declaration in May**”. Subsequently, it did not in fact meet until June 2019 – thus adding another breeding season and another year’s escalation.
- 13 BCC was reluctant to join the CC based on our experience since 2016 with DCHG, and sought some written assurances from the Minister which were received on 15th February 2019. In our view, significant assurances have not been met by DCHG since then and in CC proceedings.

- 14 It is now almost four years (five breeding seasons) since BCC first sought help with this issue. In our view the recommendations in the FIR fall seriously short of meeting the urgent here and now needs of citizens impacted by urban-living seagull colonies. Specifically, the overriding priority of public health and safety is not articulated, and therefore we believe, not accepted. Our sense is that the FIR recommendations will stretch out far into the future and further delay mitigations for citizens. In fact, the CCFIR does not even commit to mitigation happening at the end of its recommended processes and actions – while the urban seagull problem continues to escalate.
- 15 There is no denying this background and the four year timeline to date with no significant policy or actions from the Department to mitigate impacts on urban communities around the country. Similarly, there is no denying that Ireland is majorly out of step on the issue with all neighbouring jurisdictions and legitimate “interests of public health and safety” continue to go unserved.
- 16 Regrettably, as things stand, it also seems to BCC that any substantive recommendations that might emanate from the CC in the legitimate interests of entire communities being negatively impacted are, unjustifiably, a long way off, if indeed such recommendations will ever be made.
- 17 Many of the reasons why we have been compelled to submit a MR derive from the above background.

3. Negative Impacts on Communities from Urban-living Seagull Colonies

1 We respectfully ask the Minister to consider the following questions and to put them to the senior officials in DCHG:

- 1) The true extent and seriousness of escalating negative impacts from proliferating seagull colonies on afflicted urban communities continues to be diminished and almost denied by DCHG – impacts of a scale and severity not experienced or tolerated from any other animal or bird species. Why is this so?
- 2) We have yet to receive a response when we ask the authorities or vested conservation interests what possible conservation goal is being served here, such that it justifies horrendous and escalating negative impacts for months every year on urban communities? Is the continued un-resisted and unmanaged proliferation of urban-living seagull colonies, despite the serious negative impacts arising, a deliberate policy position? If so, please justify?
- 3) Why are our authorities continuing to prevaricate and delay a proper public administration response to this issue here in Ireland when it has been and is being addressed for many years in every one of our neighbouring jurisdictions on public health and safety grounds?
- 4) Whereas people encounter seagulls occasionally in our cities and towns, with their aggressive behaviour, our concerns relate to the places where high density colonies live and breed from the Feb. through to Oct. In housing estates where high density colonies breed, their negative impacts are only understood by people being compelled by current DCHG policy to live with and tolerate these impacts. Why must this situation continue to escalate every breeding season while such harm is being inflicted on communities?

2 This is a condensed evidence-based list of serious negative impacts on communities:

- 1) Intense noise in the months May through to September from sunrise, and throughout the day and night causing long-term sleep deprivation and huge distress in impacted estates
- 2) Extensive faecal contamination around homes, play areas, schools, food premises et al. From the end of February there is a substantial increase in this contamination which is linked to territorial behaviour and preparation for nesting. We see the gulls swimming in and consuming sewage waste which is both disgusting and dangerous.
- 3) Aggression, attacks and serious injury to people from breeding gulls and from aggressively foraging gulls such that injuries require medical treatment and sometimes hospitalisation
- 4) Recurring major damage to homes, schools and businesses (roofs, guttering, major plant infrastructure, solar panels, vehicles et al.) - incurring hundreds of thousands of euro in cost with often major recurring secondary damage including serious leaks and flooding
- 5) High-density colonies breeding and foraging aggressively in our schools such that primary children are kept in from the yard at food-break times for health and safety reasons
- 6) High-density colonies breeding and aggressively foraging on “sensitive areas” of our hospitals (refer DCHG licences and wasted expenditure by Lourdes Hospital, Drogheda)

- 7) huge expense on so called 'alternative measures' to deter gulls which have been widely shown and acknowledged to be "futile, a waste of time, effort and money"
- 8) An inability from late May until August to use and enjoy home gardens and safely and to properly carry out ordinary home maintenance e.g. painting, cleaning and repairs, certainly not on a ladder, and often a refusal by contractors and tradesmen to do work due to the aggression of breeding seagulls.

The Antimicrobial Resistance (AMR) threat from contaminated urban seagull colonies.

- 3 AMR is globally recognised as a major public health threat and all developed countries in the world including Ireland are implementing comprehensive national plans to address this threat.
- 4 The 'One Health' concept which recognises that humans, animals and the environment are interdependently linked has also been embraced globally and the AMR threat is a key priority. Geo-regional and National plans are only getting to attend to the environmental threat now as priority has been given to clinical medical environments in early phases of remedial measures for AMR.
- 5 Zoonosis – the spread of disease from animals to humans - accounts for over 60% of all serious human diseases in the past fifty years (WHO, ECDC et al). SARS in 2002, MERS in 2012 and COVID19 in 2019 are three stark reminders in recent and immediate memory.
- 6 BCC first raised the threat from AMR contamination in and dispersal by urban seagulls in 2017. Urban seagulls forage in all of what are called "AMR Hotspots" – places where AMR contamination is high. Professor Kathryn Arnold, York University, August 2016 set out the policy implications for the AMR threat from the environment, wildlife, and specifically urban seagulls.
- 7 DCHG in fact licenced a study of Herring Gulls in Howth, Co. Dublin by Associate Professor Dr. Barry McMahon (UCD) which confirmed the threat in his Report copied back to DCHG. When BCC asked DCHG about this study the Dept. replied "the Dept.'s only role was to issue the licence".
- 8 BCC researched AMR in urban seagulls further in Ireland, the UK, Europe and in fact globally and provided sixteen peer-reviewed studies all confirming that urban seagulls are contaminated with AMR, involved in its dispersal in the environment, and, therefore, a potential public health threat.
- 9 Dr. McMahon met BCC in January 2018 and confirmed the AMR findings regarding urban seagulls and indeed several other wildlife species. He told us that, regrettably, testing is negligible and it is difficult to say/establish and therefore unknown whether AMR is passed from seagulls to humans.
- 10 DCHG ignored our concerns about AMR contamination in urban seagulls, and also ignored our 104-page Community Report submitted in December 2017 saying it would be passed to their 2018 Review. Our Community report was then ignored in the Review - put into an Appendix under a statement that it "did not necessarily represent the views of DCHG or Aniar consulting".

- 11 BCC notified DCHG in 2018 of the AREST project being funded by the EPA to study AMR in the Environment. Professor Dearbhile Morris (NUIG) stated on RTE's ECOEYE feature on the project that our coastal waters and rivers are contaminated with AMR due to our (bad) human and animal waste (sewerage) management practices. Bathers and beach users run a risk of AMR contamination. The most vulnerable are the very young, elderly, immune-compromised or people with skin cuts. Currently, there is no legal requirement to test our waters for AMR levels.
- 12 The CC Chair has brought Dr McMahon and Professor Morris in to present to us. Essentially they confirmed what we had provided to DCHG in the studies and in their knowledge – that seagulls are contaminated with and implicated in the dispersal of AMR in the environment. They also confirmed that testing to see if AMR is being transferred to humans from animals/wildlife is negligible – there is no data because of this. However they also accepted that **the absence of evidence is not evidence of absence**. The importance of volume human testing in a disease threat context is very much understood these days.
- 13 BCC has asked since 2017 that Professor Martin Cormican – the HSE's Director of Ireland's response to the AMR threat in the clinical/hospital environment be consulted on the AMR environmental risk. He is on the record (RTE, ECOEYE, link provided) as saying that “we need a barrier between people and contaminated environments until we clean up our act”. We provided two of his AMR presentations to DCHG, and to the 2018 Review and to the Chair of the CC. Also, Dr. McMahon recommended at the end of his presentation to the CC in Feb 2020 that Professor Cormican should be asked to present to the CC and he also referred to the Arnold paper.
- 14 At our latest request for an update from the Chair he told us that Professor Cormican has not responded to the CC's communications. Clearly Professor Cormican is now fully engaged on the COVID-19 crisis in our Hospitals and he will be so for the duration of the crisis.
- 15 The two of Professor Cormican's presentations that we provided to DCHG and to the 2018 Review and to the CC Chair state explicitly that AMR is mainly contracted by microscopic traces of faeces that are ingested, inhaled, picked up through drinking contaminated water, through contact e.g. on skin cuts or exposed injuries. AMR-contaminated high density urban seagull colonies deposit huge volumes of their faeces and other large quantities of detritus when breeding on our homes, schools, supermarkets, restaurants, hospitals etc. for over seven months every year and this faecal detritus is dispersed freely in the environment as it is dried out and windblown.
- 16 BCC provided DCHG, the 2018 Review, and the Chair of the CC with a link to the UK's Health and Safety Standards for protection of workers who encounter high levels of bird mess and detritus on the job. UK Employers must provide full Respiratory Protective Equipment (RPE) to their employees, sites must be completely screened off and chemically treated prior to cleaning. Power-washers are prohibited because they create aerosolized droplets in the environment, and employees with respiratory conditions must not be assigned to this type of work. BCC has witnessed Irish workers cleaning extensive bird detritus sites (schools, pubs and supermarkets) using power-washers to try to keep the premises clean. BCC asked the Irish Health and Safety Executive in 2016 if such protections were in place for Irish workers and we were told that employers needed to refer to the Acts – response copy available if required..

- 17 The EU has officially recognised the threat of AMR contamination in the Environment from animals and from wildlife in its latest AMR strategy documents – these were provided by BCC to DCHG, the 2018 Review and the Chair of the CC.
- 18 The Department of Agriculture and Teagasc have issued formal literature to the farming community warning about AMR and the transfer of contamination from farm animals to humans. BCC has provided this documentation to DCHG and to the Chair of the CC.
- 19 BCC has raised the AMR threat concern since 2017 and it continues to be ignored by DCHG. It was also ignored by the 2018 Review cited by DCHG in 2016 as “the means by which all perceived threats would be addressed”. While the CC has recently started to pay attention to the AMR issue, our sense is that DCHG and the CC will continue to rely on an “absence of evidence”, which we believe to be due to negligible testing as flagged by Dr. McMahon and Professor Morris. We believe the AMR threat should influence the imminent 2020.21 Derogation Declaration and is featured in our recommendations in section 5.
- 20 In 2018 our then MEP Lynn Boylan (Environmentalist) researched the attitude in EU countries to the AMR environmental threat through the EU Commission and Parliament libraries on our behalf. She wrote to DCHG and the Dept. of Health stating that there were sufficient grounds for “an abundance of caution approach” to the urban seagull threat and that Irish citizens should be given an equal level of protection as is being afforded to EU citizens under EU law. She described the fact that this is not the case, when it is catered for in the legislation, and common across the UK and EU, as “bizarre”. MEP Boylan’s letter was ignored by DCHG, the 2018 Review and the Dept. of Health.
- 21 Communities being compelled by DCHG policy to live with high density urban seagull colonies are clearly at a higher than ambient degree of risk from the AMR threat than those not being afflicted by the urban seagull problem and are entitled to the protection of the State under national and EU law.
- 22 We ask once again, why are we not being protected? We will continue to ask until we are protected.

4. BCC Concerns with and Divergence from the CC

- 1 The Chair will have reported his assessment of key elements addressed to date in CC meetings since June 2019 in the CCFIR; therefore we do not cover the same ground here.
- 2 This Minority Report from BCC would not have been necessary if the CCFIR had contained a substantive recommendation with reasonable mitigation measures for impacted communities for the 2020.21 State-wide Declaration due on 1st May. We have made our position clear on this since the first CC meeting in June 2019, to the Minister in Feb 2019, and indeed since May 2016.
- 3 BCC has provided extensive evidence that Ireland is majorly out of step on the urban seagull issue in terms of policy and operational practices compared to every one of our neighbouring jurisdictions – UK, including Northern Ireland and EU – all of whom have been protecting their citizens in impacted areas on grounds of public health and safety “for years”. DCHG acknowledged that we are out of step in a meeting with us on 8th December 2016. We are still majorly out of step in 2020 and into the fifth seagull breeding season since we first sought help. Based on CC proceedings to date and the CCFIR, it seems clear to us that Ireland will remain out of step and that citizens will remain unprotected here indefinitely unless and until further Ministerial direction is provided to DCHG.
- 4 If one concedes an arbitrary five thousand breeding seagull pairs in greater Dublin, they are producing up to fifteen thousand chicks every year. Seagulls breed from aged four and are very long-lived. Urban seagulls generally do not revert to living in natural habitat (P. Rock, CC 2 and several published papers). What is the conservation goal of urban seagull proliferation?
- 5 Regrettably in our view, our experience to date in the CC vindicates many concerns that we and our TDs raised with the Minister in correspondence between Sept. 2018 and Feb. 2019.
- 6 BCC’s main points of concern and divergence are as follows:
 - a) We notified the Chair and the CC of our diverging views on a number of substantive points including public health and safety concerns, throughout CC meetings 1 to 4, and made clear the likelihood that we might have a divergent position after CC meeting 2 in Dec. 2019.
 - b) We notified the Chair of our decision to prepare and submit a MR and our reasons for this decision after CC meeting 3 on 4th Feb 2019. Our MR position prompted the Chair to remove all recommendations from the CCFIR. We replied that that was the Chair’s prerogative, but that we felt obliged to submit a MR for the reasons given. The Chair subsequently reinstated high-level recommendations for reasons set out in the FIR.
 - c) BCC tracked the development of the new seagull management policy for England over eight months from May 2019 to its publication in January 2020. We provided this to the Secretaries General of DCHG and the Dept. of an Taoiseach and to the Chair of the CC on 3rd March last - see section 7 and Appendix 1. By arrangement with the Chair we provided him with a set of questions (Appendix 2) for a conversation he hoped to have with the Chair of Natural England (NE) about the policy – we understand NE has not reverted yet. We believe that our set of questions should be

considered by DCHG if the England policy is to be explored in detail and referenced for a solution here.

- d) **We gave our view that the new policy for England might offer a contribution towards a solution here – provided that all eight of the principles on which it is based are adhered to and not cherry-picked.** Specifically, NE's urban seagull management policy relies on 'class licences' used e.g. by Local Authorities and authorised pest control companies.
- e) We were more than surprised to see that in a matter of a few days the NE policy was referred to the CC by the Secretary General (not covered by the Terms of Reference) and – at face value, without discussion by the CC, and untested in use, and became the basis for key recommendations in the FIR, while the FIR itself remains ambivalent about the overriding priority of public health and safety – a key pillar of the NE policy. This is an example our concerns about cherry-picking. Latterly, the FIR has rowed back somewhat on that approach to the NE policy for reasons set out in the FIR.
- f) We replied to a request for comments on the England policy from the Chair on 28th March 2020 stating our regard for the eight principles (at face value) as set out in the policy – the first principle being the overriding priority of public health and safety.
- g) At present DCHG does not attribute overriding priority to public health and safety and refuses to explain why this is so. In our view, this is an irrational and indefensible position given that the Dept. is solely responsible for Article 9.1.a) of the Directive – i.e. protection of citizens “in the interests of public health and safety”. DCHG has independently issued case licences on those grounds for over thirty years and has only sought to resile from this historical precedent since the urban seagull issue emerged in 2016. Furthermore the Department of Housing, Planning and Local Government, (DHPLG) our Local Authority (FCC), and the Dept. of Health (DoH), are each on the public record stating that this (seagull issue) is primarily a matter for DCHG – documents available if required.
- h) In our view the recommendations in the FIR fall seriously short of meeting the urgent **here and now** needs of citizens impacted by urban-living seagull colonies. Our sense from the CC, and the FIR is that the negative impacts on communities are persistently being diminished and are of low priority relative to ecological and conservation considerations.
- i) The CC/FIR position on impacts on urban communities and on the overriding priority of public health and safety is appositely contrary to the English policy now being referenced in the FIR as having a potential input to a solution here. We retain serious concerns that DCHG will seek to cherry-pick the Depts. apparent need for a case-by-case system based on applying for a licence from the English policy and ignore or dilute the other key principles of the policy – in particular 'Class' licences for Local Authorities dealing with high-density colonies.
- j) In particular, we notified the Chair repeatedly that, given the full background of this issue (Sections 2 and 3 above), BCC could not sign off a FIR that did not include a substantive recommendation towards the 2020.21 Declaration for basic mitigation measures for human communities impacted by the urban seagull problem.
- k) Given that DCHG is the progenitor and sole sponsor of the CC, the fact that the DCHG management representative on the CC has missed two out of the four meetings held is strikingly

odd, especially leading towards a FIR with potentially substantive recommendations. This is not a personal criticism as no doubt there were entirely valid reasons for the two apologies received. However in our experience, in the case of the main sponsor being unavailable, either a suitable deputy is sent along or rescheduling occurs. The two technical representatives of DCHG had to qualify their contributions in both missed meetings as being subject to subsequent approval/ agreement by the DCHG management side of the Dept.. This situation was most odd in our experience.

- l) As constituted and operating the CC, in our view, seeks to impose and preserve not just equivalence of rights for urban-colonising seagulls over legitimate and reasonable interests of people, in fact it seeks to continue to subordinate, indefinitely, people's ordinary and normal rights to comfort and safety in their homes and schools to the perceived interests of seagulls.
- m) contrary to an indication given by the Chair and the CC to BCC in CC meeting 2 when we asked if communities have to continue to "suck this up indefinitely" to which the answer we received was "no", the CC clearly seems intent on deferring any mitigation measures to which it might eventually agree, until the end of an unspecified, un-resourced, unscheduled period of research activities – research that BCC believes has already been carried out in other jurisdictions e.g. in Holland, Belgium, France and parts of the UK.

Clearly and incontrovertibly, such an approach continues to place the legitimate interests of negatively impacted communities firmly last in all considerations. This approach is unjustifiable and will continue in our view unless strong political direction is given to DCHG that the interests of public health and safety are in fact and are to be treated as overriding interests in the making of policy and operational decisions.

- n) It is clear to BCC from the CC's proceedings that the **overriding priority of public health and safety** - a principle that inarguably warrants primacy in public policy making has neither been overtly accepted nor articulated in the CC, except by us, nor has it been accepted by DCHG.

Intuitively, if this principle were unequivocally accepted by DCHG and the CC the FIR would now contain an uncontested, substantive and strong recommendation for reasonable mitigation measures in the interests of citizens for the 2020.21 State-wide Declaration.

- o) It is also clear to BCC that we are the only members of the CC speaking up for the legitimate interests of citizens. There is no State advocate for citizens on the CC and none of the institutional members are fulfilling this role – it is being left to a committee of citizens from Balbriggan. We have stated this fact at each of the four CC meetings to date and this gap in the CC membership remains a serious concern to us.

In our considered view, it is DCHG/NPWS that should be proactively fulfilling the citizens' advocacy role under Article 9.1.a) of the Birds Directive, thus honouring the State's primary duty of care to citizens being harmed by uncontrolled, unmanaged and un-resisted high-density wild bird colonies. **If DCHG is not responsible, and given the stated official positions of DHPLG, FCC and DoH, – who is responsible?**

- p) When asked by BCC in CC meeting 3 if DCHG accepted that, allowing that it has confirmed that it has just one Ranger for all of Dublin North, and that it accepts that there are very high numbers of urban seagulls in Dublin North - the effect of its policy and operational approach to managing urban seagull issues is that the Department is de facto **compelling** very many communities, schools, hospitals and businesses to live with circumstances that have been regularly and routinely classified – for over thirty years - as public health and safety risks in its own case-by-case system, by its own Rangers, through its own procedures, and through its own legal Department's assessments.....the Department replied “we obey the law”.

In continuing to subordinate the interests of communities' public health and safety to what are, in our view and in our direct experience, highly questionable and unjustified conservation interests, and claiming to be “obeying the law”, the Department is therefore inferring that Northern Ireland, Scotland, Wales, England, and all of our Northern EU neighbours who have been protecting millions of their citizens under the Birds Directive for many years are “not obeying the law”. BCC asks what law mandates that thousands of people live with the negative impacts set out in section 3 above, and is this really a tenable position?

- q) UK seagull researcher and expert Peter Rock gave a lengthy talk (phone conference) in CC meeting 3. He acknowledged that noise from gulls is “probably the number one complaint issue in the UK”; he also acknowledged that so called “alternative deterrent measures” are largely futile and a waste of time and money when gulls are determined, yet this futile effort is still often required by conservationists and policy makers. When BCC interrupted to ask a question about “unsuitable locations” for gulls, Mr Rock asked us to clarify what we meant by “unsuitable locations” and we cited “schools and hospitals”. Mr Rock responded saying “oh yes by all means keep them off schools and hospitals, screeching gulls are the last thing you want when you are sick in a hospital”. This exchange was not minuted, and the Chair told BCC that he rang Mr Rock to clarify his comments, and the Chair has said that “Mr Rock claims that BCC is taking his remarks out of context”. There were two BCC representatives present and we know what we asked Mr Rock, we know why we asked it, and we know what the reply was. However, there are no detailed minutes covering this exchange and it is therefore a substantive matter of dispute that is unresolved.

‘Class Licences’ are used by Local Authorities and pest control companies on public health and safety grounds all across the UK and Northern Europe to remove nesting gull colonies from schools and hospitals and indeed from residential areas where high-density colonies are established. Extensive evidence of this has been provided by us to DCHG since 2016, and subsequently to the CC. This irrefutable evidence pertained directly to BCC's question of Mr. Rock and his reply - and it continues to be ignored.

- r) BCC asked the Chair if he could establish whether DCHG/NPWS had included any funding in its 2019 estimates for 2020 spending towards addressing the urban seagull issue and the Chair replied that estimates could not be made until there was a basis on which to make them. This situation is contrary to the normal prudent approach taken to estimates made in Government Departments. **In BCC's experience when/if there is any serious intent in a Department or Public Office to act on an issue in the coming year(s), there is always something put in the estimates in advance; also in our experience, the opposite applies.**

BCC is obliged to assume that no relevant funding has been sought/reserved by DCHG for the urban seagull issue in 2020– again making 2021 look like the earliest possible scheduling for any serious actions that cost money. This situation speaks to the continuing standoff between DCHG and FCC relating to responsibility and resources for the issue, and the concern that the new policy for England will be cherry picked by DCHG.

On the question of resources, BCC is acutely conscious now of the huge economic blow to the country from COVID-19 which looks like extending significantly into the future. The issue of resources will surely be critical across every branch of Government, potentially for several years ahead.

In our view, a basic General Licence to protect people is needed in the interim period pending development, eventually, of a comprehensive new policy. Otherwise, as the problem continues to escalate due to un-resisted, unmanaged urban-living seagull colonies, reasonable protections will continue to be denied to communities.

- 7 In the round, based not just on the sample of our concerning experiences in the CC that we have set out above, BCC is satisfied that there are more than enough reasons to conclude that we have in fact been dealing with an unspoken *fait-accompli* by the Dept., not just since the decision to set up this CC in October 2018, not just since the Interim report of the Major Review in April 2018, not just since the Departments reneging on its undertaking to meet and discuss our Community Report in December 2017, not just since the Department's letter to us in September 2016 citing the major review as the solution for all perceived threats, but actually since the Department's first emailed reply to us on 1st July 2016 basically dismissing our community and telling us to go away – copy of the Dept.'s reply to us on 1st July 2016 is available if required.
- 8 The Department's managed and phased '*fait accompli*' has been to prevaricate, delay and do nothing about this issue for years already past and potentially it seems for years to come, under the guise of a very selective and demonstrably atypical interpretation of the Birds Directive, and a CC that looks set to run slowly, with no meaningful actions or mitigations for communities in sight.
- 9 Once again we acknowledge the Chair's efforts to reach consensus, and progress made on a framework and potential approaches. We also acknowledge the strong divergence of views in the CC on a number of issues. If consensus is set as a mandatory output from such a committee, it follows that little or no progress on core issues is possible when divergence persists on such issues. In such circumstances, either direction must be given or a decision must be made to square the circle. It is our view at this point that Ministerial direction is needed to ensure that the Department and therefore the CC applies the principle that public health and safety is an overriding priority and as such must be fully respected in policy. If public health and safety is not the overriding priority – whatever the priority is needs to be articulated and explained clearly and unequivocally.

The Legal Context Module of the CC and the impact of noise from urban colonies

- 10 Noise from high density urban colonies over seven months every year is a major impact, often from 3am and through all 24 hours on and off every day. Noise was identified as the number one issue by UK expert Peter Rock in his presentation to the CC in Feb. 2020.
- 11 DCHG claims that it is “obeying the law” in its policy and procedures on urban seagulls. This implies that all of our neighbouring jurisdictions are not obeying the law. Also, DCHG has taken an ambivalent and historically self-contradictory and indefensible position on its responsibility to “protect the interests of public health and safety” under Article 9.1.a) of the Birds Directive.
- 12 At paragraph 15 below see a paper submitted to the CC Chair on 16th March last relating to environmental noise and its impacts on public health and safety including the latest position in the EU and WHO (provided to us by our MEP Clare Daly in February 2020) on standards for night-time noise and a recognition of the serious public health issues involved. We believe that FCC has extensive expertise on environmental noise and that it is recognised by public authorities as including a serious public health dimension.
- 13 We have asked the CC Chair to provide our paper on environmental noise to the Barrister that he is communicating with for the Legal Context module that he has designed into the CC programme.
- 14 Importantly, we have also asked the Chair to ensure that the Attorney General (AG) is consulted on this matter and with all of our concerns as set out in our document of 16th March below, and specifically to include the legitimate interests of citizens. In our view, such a comprehensive consultation with the AG should and must be undertaken by DCHG.
- 15 Based on ordinary common sense and human experience, constant sleep deprivation for hours every night over even a short length of time-not to mention for several months -.is a serious matter for the health and well-being of sufferers and has knock on effects on safety in driving, and work etc..

16

16th March, 2020

**Balbriggan Community Committee (BCC) submission to
Consultative Committee (CC) Chairman Derek McLoughlin
Environmental Noise pollution – urban seagull colonies**

Dear Chair,

We (BCC) mentioned to you that we would make a number of submissions in the coming days towards your deliberations on the First Interim Report (CCFIR).

We also mentioned to you that our MEP Clare Daly is working on our behalf on several issues and questions within the urban gull issue. Understandably the COVID-19 issue has impacted the EU institutions, but Clare is working away. This document relates to the Environmental Noise issue.

The attached document from MEP Daly assembles official information and links on all current work at EU and WHO level in relation to Environmental Noise Pollution and its acknowledged serious public health implications - which are explicitly described in the documentation. You will see the reference to a WHO target of a 40db night-time noise level in the MEP's document - and we referred to this WHO target in the document we sent to you last Friday, 13th March, towards your planned discussions with Natural England's Chair, Tony Juniper.

We have previously - since 2016 – drawn the attention of the Department, the 2018 Review and latterly the CC, to the urban seagull noise issue and in particular to sleep deprivation afflicting residents of housing estates in which high-density gull colonies are living, breeding and expanding un-resisted. We have provided material from Professor Niall Moyna of DCU on human performance, human health and the importance of sleep; a recording extracted from RTE's 'Awake' programme is attached. We have asked the CC a number of times to invite Professor Moyna to speak to us; and we have previously provided evidence-based material from the Road Safety Authority's "Tiredness Kills" campaign –

https://www.rsa.ie/Documents/Campaigns/Drunk%20With%20Tiredness/Driver_Tiredness_The_facts%5B1%5D.pdf

Peter Rock acknowledged in CC 3 that noise from urban gulls is a major issue, probably the number one issue to his knowledge on the list of negative impacts across the UK.

Urban gull ecology shows that breeding pairs return to successful nest sites, and 3-4 year olds often return close to where they were hatched in order to breed. We provided two case studies (with photographs) in our December 2017 Community Report - one of which was a single semi-detached house in a housing estate with **six nesting pairs and eighteen eggs**, another of which was a similar house 100 metres away with **3 nests/9eggs**, and a regular gathering of 12- 15 gulls (juveniles) on the roofs of these houses. One of these houses has nine (futile) sets of deterrent spikes on the roof which the gulls break and pad with sods. The Department's Ranger declined written invitations from BCC to visit these sites. The Roughan O'Donovan Consultant doing the drone study did visit these sites, and many others, and spoke to the people, as did FCC Director Power. The Roughan O'Donovan Consultant observed that juveniles sometimes help with feeding and protection of chicks - an observation we have made ourselves.

The thing that has made a difference to these and many similar cases has been the ability to systematically, repeatedly remove nests every season – up to four times before the gulls give up and move away. We are hoping that the cycle will be broken in the next two seasons. The amount of faecal mess around homes has been disgusting and uncivilised, as has the aggressive behaviour of the gulls. We have no doubt that many residential estates around the country have identical issues.

Many of our estates suffer the noise issue from high-density colonies from sunrise, and 22/7 from May until October, with some breaks during the day as the gulls forage. This is a huge and escalating negative and serious impact - including during the daytime for shift/night workers.

People who work in Dublin reported to us that they can't open office windows all summer due to the noise. Office workers have observed residents in the Georgian houses on Nth. Gt. George's St hanging out windows with large helium filled red balloons with yellow scary faces on them trying to scare gulls off their roofs. Offices have had ground nesting gulls in car parks.

This situation is ridiculous and freely escalating. Ireland is majorly inferior on policy, gull management operations, and on protection of public health and safety compared to all of our neighbouring countries – and has been for many years now. Action is long overdue and it will be inexcusable not to start now ahead of the next Derogation Declaration.

After CC 4 we offered to send you a 30-second MP3 of Herring gull calls to put on your phone as an alarm tone - you mentioned your familiarity with gulls and your time in Bristol. The MP3 is attached in this message. We suggest that you email it to your phone, save it in your ring-tones, and set it as your alarm tone, to go off every 30 minutes from 11pm to 8 am - with a 2 hour gap from 1:30 to 3:30am, every day, and every hour through the daytime. And then we ask you to see how long you can put up with it, and to imagine the cacophony from up to 30 nests in a housing estate, with two adults and three chicks in each from May to October through those hours every day. You might consider speaking to parents of Junior and Leaving Cert exam children who live in impacted estates and who go into their examinations "like zombies" because gulls have them awake from 3am in the weeks running up to and during their exams. Once again – parts of our estates might as well be on Lambay Island. What possible “conservation” argument is there to justify this state of affairs that is worsening every breeding season?

The noise issue, the terrible distress it causes and the undoubted risks it adds for drivers of all types, working heavy machinery et al. - this issue alone in our view is enough to see high-density gull nesting rigorously prevented in residential areas. **And this issue and many of the other impact issues needs to be properly described and acknowledged in the CCFIR to the Minister, not just skimmed over in a few lines.**

In relation to the Legal Context presentation/discussion being planned for April- if it is still going ahead, we submit the following requests:

If a person is sleep-deprived e.g. from being awake for hours during the normal sleep period of say 11pm to 7am, for several months:

1. What is the legal liability position if the person drives a Public Service Vehicle (or a family car, or a Heavy Goods Vehicle) and they are culpable in an accident due to driver fatigue in which several people may be injured or killed?
2. If a person works using heavy machinery in their job and causes an injurious or fatal accident to him/herself or to a colleague or colleagues that is attributable to a lapse in concentration caused by tiredness/fatigue - what is the legal position a) for liability for the accident b) if the employee declares him/herself unfit to work and may be then suspended or dismissed by the employer, and c) if the employee informs his employer of tiredness and the reason for it and is instructed to work on the machine anyway?
3. What views do insurance companies have on this, and what is their direction of travel in terms of actuarial risk assessment, liability and litigation in tiredness cases? This question is particularly pertinent as recognition of impairment due to tiredness increases.
4. Should people who are impacted by constant sleep disruption from constant environmental (seagull) noise be advised to ask their GP to certify them as being unfit for work? Or should they be permitted to remove the cause of the noise/impairment – the seagull nest(s)?
5. Should people impacted by constant noise from gull colonies **continue to be compelled** – as is the status quo due to DCHG policy – to live with it and accept it? What is the legal position of DCHG who have the statutory responsibility, the necessary legislative provisions to act "in the interests of public health and safety", and who are very well aware of the noise problem, and of its impacts on entire communities of people around the country, and of the fact that Ireland is behind the rest of its EU (and UK) neighbours in protecting citizens?
6. Looking at these media reports, it would seem that a person who is tired and continues to drive/work is the one who is legally liable, yet the state/DCHG will prosecute them if they take a reasonable action (remove nest(s) to eliminate the cause of their tiredness), and they must self-exclude from doing their job if it involves driving/heavy machinery:

<https://www.thejournal.ie/driver-asleep-balbriggan-2761718-May2016/>
<https://www.mirror.co.uk/news/uk-news/tired-mum-killed-another-driver-16521344>
<https://www.dailymail.co.uk/news/article-7529613/Man-fell-asleep-wheel-killed-girl-16-jailed.html>
<https://www.derbyshiretimes.co.uk/news/crime/whitwell-man-who-caused-fatal-crash-after-falling-asleep-wheel-jailed-730783>
<https://www.cdc.gov/features/dsdrowsydriving/index.html>
<https://www.libertyinsurance.ie/blog/driver-fatigue>
<https://www.axa.ie/articles/driving/how-does-driver-impairment-contribute-to-collisions/>
<https://www.hse.ie/eng/staff/safetywellbeing/healthsafetyand%20wellbeing/safe%20driving%20for%20work%20policy%202018.pdf>
<https://www.constructionequipment.com/caterpillar-takes-closer-look-operator-fatigue>
<https://pbeinc.com/news/machine-advancements-help-combat-operator-fatigue/>
Please see page 164: https://www.garda.ie/en/Crime/Traffic-matters/Rules_of_the_road.pdf

7. Is it not in fact the case that the Birds Directive sought/seek to prevent abuse of the health and safety provision as a mechanism to just get rid of inconvenient birds, but it never anticipated the major issues that are arising from urban gull colonies – that in fact ‘public health and safety’ is an “overriding” public policy with unchallenged primacy?

17 BCC requests that an opinion from the Attorney General’s office is also sought by the Department regarding the serious negative impacts on entire communities from urban gull colonies, and the degree to which Ireland is out of step with the EU and the UK. We ask that the AG’s opinion would also include consideration of a person’s right to own and enjoy safe and comfortable use of their homes, and the State’s duty of care to citizens and their health and safety, in particular to our children in their schools, elderly and immune-comprised citizens being exposed to (documented) physical attack, injury and infection risk from urban gull colonies – despite the existence of national and EU legislation to mitigate and prevent such attacks without harm to seagull species.

Conclusion.

- 18 It is BCC's view that the 'noise' case in relation to high-density urban seagull colonies is a plain common-sensed case of sufficient gravity to warrant systematic prevention of high-density nesting in residential areas on incontrovertible public health and safety grounds.
- 19 It is also BCC's view that this is an urgent matter that must be addressed at the next opportunity i.e. the 2020.21 State-wide Derogation Declaration. It is irresponsible for DCHG to seek to justify and hold to its case-by-case assessment position in the face of incontrovertible evidence of rapid expansion of urban seagull colonies in residential areas – until such time as 'Class Licences' are in use by Local Authorities and other approved providers of managed services.
- 20 Similarly, there is no justification for delaying a necessary policy change any longer to provide for unspecified research that has already been completed in our neighbouring UK and EU countries.
- 21 Accordingly, BCC makes the following recommendation to the Chair of the CC - see section 5 for further recommendations and rationales.

The 2020.21 State-wide Derogation Declaration should include Herring gulls and permit nest/egg removal in urban areas on public health and safety grounds, and this provision should be widely publicised well in advance of 1st May 2020.

If this recommendation is not made to the Minister and the Department for the 2020.21 Derogation Declaration, BCC requests a written explanation from the Chair as to why it is not being made, such an explanation to justify continuing to compel entire communities around the country to live with a public health and safety risk that has been routinely acknowledged in case-by-case inspections by NPWS Rangers for over thirty years.

- 22 DCHG has itself issued case licences for nest removal that acknowledged the noise and disturbance issue. It should not be necessary for site visits to housing estates with fifteen to thirty nests operating for five months every year to establish whether or not there is a serious noise issue.
- 23 In concluding this section of our MR, we recognise that there is a lot of detail. This is so because DCHG has sought to diminish this entire issue since we raised it in May 2016, likewise with the 2018 Review, and now again with this CC – which DCHG is seeking to establish or portray as a new 'ground zero' on the issue – '**we are where we are**' so to speak. In our view, we are where we are because of DCHG prevarication, and we are not very far along given the pace to date.
- 24 BCC will not acquiesce to the seriousness or the unjustifiable long delay on addressing this issue being diminished and/or concealed. BCC will continue to pursue all legitimate avenues open to us until a proper public administration response to this issue is forthcoming from the responsible authorities.

5. Recommendations from BCC.

- 1 BCC puts forward the following recommendations based on our knowledge and understanding of the urban seagull issue derived from direct experience in our community and from our research over several years into what happens across the UK and EU on the issue.

We have submitted these recommendations to the Minister (and previously to the Chair of the CC for sharing with all members) in good faith.

1. DCHG/NPWS should include the Herring gull (and other gull species if necessary) in the 2020.21 State-wide Declaration and should extend the Balbriggan provision to all impacted urban areas in a simple General Licence like the one used in Northern Ireland for many years - permitting nest and egg removal on public health and safety grounds:

- a) This provision is necessary now, indeed long over-due, and can be an interim pre-cursor to a comprehensive seagull management policy and a managed services suite to be developed either by the CC or in partnership with DCHG/NPWS and Local Authorities as priorities and resources allow
- b) this provision should be widely publicised in national press and broadcast media well in advance of 1st May 2020
- c) people in residential areas, hotels, bed & breakfasts, schools, creches, universities, hospitals, medical centres, and all other human care facilities should be advised to avail of this provision using qualified, insured contractors,
- d) all business premises involved with production, manufacture, storage, sale or consumption of human food should be advised to avail of this provision
- e) in circumstances where chicks have hatched, nest(s) should be left undisturbed and reported to DCHG/NPWS who may arrange for relocation of the chicks
- f) intervention to remove nests and eggs must be reported within 30 days by the property owner/manager to DCHG/NPWS on Form XXX – to be designed.

- 2 **As it is now late April, it is too late for BCC's remaining recommendations as follow to be considered in time to have a substantial influence on the 2020 breeding season. Notwithstanding, they are submitted by us as a carefully considered contribution to development of the best possible policy and solutions.**

- 2 DCHG/NPWS should seek early discussions with the Local Government Management Agency (LGMA) and

- a) request that Local Authorities with cities, large towns and large residential areas conduct specified (NPWS data) surveys and provide an up-to-date assessment of the impacts of urban seagull colonies in residential areas, schools, creches, universities, hospitals and all other human care facilities, also premises involved with production, manufacture, storage, sale or consumption of food
- b) identify and nominate suitable locations for survey, observation and study of urban gull colonies, including use of drone, camera and audiology technologies

- c) develop a communications message for the general public, schools, hospitals and business building upon Fingal County Council's innovative on-line publicity leaflet on food waste management, non-feeding of gulls, and promotion of these policies through visits from Environmental Health Officers to all food premises – such measures to include legal and penalty-based enforcement if/as necessary
 - d) develop new or enhanced enforcement measures to discourage and penalise persistent feeding of gulls in urban areas, including fines and prosecutions; note prosecutions in 2019 for feeding of pigeons and seagulls in residential areas
 - e) negotiate the setting up of Local Authority managed services for removal of seagull nests and eggs and relocation of chicks (see recommendation 3 above regarding approved contractors and service providers), with consultative, advisory and participatory roles for NPWS Rangers or NPWS-nominated partners at the discretion of NPWS.
3. DCHG/NPWS should establish an online register of approved licenced contractors and service providers for gull-proofing of large sites, removal of nests and eggs, and relocation of chicks:
- a) this provision must include standards covering insurance, tax compliance, competencies, equipment (including maintenance), protection of work-force and client health and safety, comprehensive training and all required competencies
 - b) this provision should include mandatory reporting of all interventions made under a Licence – location(s), removals, repeat actions and outcomes
 - c) record keeping of all interventions must support multi-annual matching of location(s), data retention and reporting
 - d) DCHG should consider whether such contractors would also have assignments or contracts to trap, ring, GPS-tag and cull gulls in prescribed circumstances
 - e) such contractors and service providers would be required to collaborate with NPWS Rangers or NPWS-nominated partners at the discretion of NPWS.
4. DCHG/NPWS should devise a communications strategy - a schedule of actions for such a strategy should include:
- a) early briefing of the policy and rationale to Government, the Oireachtas and county councillors
 - b) transparent and consistent communications through national media to the general public such that the policy and rationale is clearly understood
 - c) partnered and co-ordinated communications with the LGMA, Local Authorities, and registered approved contractors and service providers
 - d) comprehensive online information and FAQs about the policy, the rationale, procedure and compliance requirements
 - e) an on-line reporting system for seagull issues.
5. DCHG/NPWS should notify the Department of Education of the intention to develop new urban gull management policy insofar as it will relate to schools, and universities:

- a) ask schools to complete a survey (preferably online) designed to capture all relevant information about impacts of seagull colonies
 - b) agree a communications text similar to 4b) above with the schools for boards of management, staff and parents' councils
 - c) develop a balanced learning module for children/students that incorporates and explains prudent species management actions as well as conservation principles.
6. DCHG/NPWS should notify the Department of Health, the Health and Safety Executive, the Health Information and Quality Authority, and the Department for Children of the intention to develop new urban gull management policy insofar as it will relate to hospitals, other medical facilities, care facilities, creches:
- a) ask Hospitals to complete a survey (preferably online) designed to capture all relevant information about impacts of seagull colonies
 - b) agree a communications text similar to 4 b) and 5 b) above with the DoH/HSE/HIQA for management and staff
 - c) ask the HSE/HIQA to notify the register of approved contractors and service providers to all hospitals and medical facilities
 - d) examine the protections needed for workers who encounter high-density bird waste and detritus in the course of their work and enhance as necessary.
7. DCHG/NPWS should notify the Department of Agriculture and Food and the Food Safety Authority of the intention to develop new seagull management policy.
- a) Other EU jurisdictions have curtailed free range /outdoor farming e.g. of pigs and poultry due to seagull flocks visiting farms, shedding faeces and the Antimicrobial Resistance threat
 - b) Seagull flocks visit meat plants and aquaculture sites for foraging purposes; DCHG has previously denied a licence to such plant seeking to control seagulls – this should be reviewed
 - c) Farmers should be a useful source of information on seagull flocks visiting lands and impacts on other species.
8. DCHG/NPWS should notify the Department for Jobs, Enterprise and Innovation and the Health and Safety Authority of the intention to develop new urban gull management policy:
- a) all workers who encounter urban gull colonies or indeed large volumes of nest and/or other detritus from any bird species should have their health and safety protected in line with best international practice e.g. the following standards as applied for several years now in the UK
<https://www.hse.gov.uk/construction/healthrisks/hazardous-substances/harmful-micro-organisms/other-diseases.htm>
 - b) DCHG/NPWS should agree a communications and procedural text with DJEI and the HSA to ensure that best practices in public health and safety and in the protection of workers are exercised in relation to all urban bird colony sites
 - c) major damage and costs caused to business by urban gull colonies requires a proactively managed set of solutions to minimise impacts and at the same time

respect conservation requirements and objectives e.g. very early identification of nesting activity and early interventions could reduce damage and costs and would also disrupt and dislocate and relocate colonies nesting on unsuitable buildings before they are incubating eggs.

9. DCHG/NPWS own the policy lead on the urban gull management issues and funding and resourcing issues that arise in the creation of new policy must be identified, quantified and negotiated with and between the involved organisations. Continuing to stand off this issue and watch rapid proliferation continuing un-resisted is contrary to effective public administration and inimical to the legitimate interests of citizens impacted by the problem.
- the
- a) Local Authorities are not going to engage unless and until the resources issue is acknowledged and properly addressed – Fingal County Council has said so on the record to BCC and in the CC, and the Minister for Housing Planning and Local Government has stated on the record that this issue is “primarily a matter for DCHG”
 - b) Schools and Hospitals will not have funds to deal with this problem, especially large, established colonies – there is no point in DCHG either waiting for them, or telling them, to “apply for a licence” as their problems escalate and entrench
 - c) at its core, this is a public health and safety issue where high density colonies have established and are expanding rapidly and un-resisted – and ‘the consumer pays’ principle does not and should not be applied
 - d) continued prevarication will make the problems bigger, worse, more difficult and expensive to address, and more likely to lead to harm measures being taken.
10. DCHG/NPWS should write to the EU Commission/Environment Directorate and set out the major negative impacts that expanding urban gull colonies are having on communities here and the public health and safety concerns:
- a) public health and safety is an overriding priority
 - b) many so-called ‘alternative measures’ are discredited and futile, a waste of time and money in many circumstances, especially large scale sites/roofs
 - c) the Commission’s excellent work on environmental noise and public health and safety needs to factor in the noise over several months every year of rapidly expanding high-density urban gull colonies in residential areas. The WHO target is 40db for night-time noise, gull colonies reach 115db with their calls all through the night in residential areas continuously over several months – causing major distress and both health and safety risks many residents in impacted areas.
11. DCHG/NPWS should set out a clear list of realistic and practical conservation and research objectives (including funding and resource proposals) in relation to urban gull colonies and their prudent management, with public health and safety unequivocally positioned as an overriding priority:
- a) it is well past time to accept that urban-living and rural-living gull species groups are separate and do not mix, and to stop conflating their numbers and conservation status for policy purposes – as has now been explicitly recognised in the new policy for England.

- b) blaming food waste behaviours on the urban gull situation is facile – the species has chosen urban living for reasons that also include efficiency, lack of predation, better shelter, higher temperatures, breeding success, and possibly most of all because, unlike many other bird species, they are not being resisted by humans
- c) **seeking to coerce society to accept and get used to the huge negative impacts of freely proliferating high density urban gull colonies is a mistake**, is certainly not a conservation policy that includes prudent species management, and will inevitably lead to more severe measures being taken against urban gull species.

12. DCHG, as the statutory body responsible for the implementation of article 9.1.a) of the Birds Directive that is intended to protect **the interests** of public health and safety should pay close attention to the now globally accepted ‘One Health’ policy that closely connects human health, animal health and the environment:

- a) Zoonosis - 60% of all infectious human diseases come from animals/wildlife
<https://www.cdc.gov/onehealth/basics/zoonotic-diseases.html>
- b) AMR is a major public health threat and seagulls are clearly implicated as being contaminated with AMR and dispersing it in the environment
- c) communities being compelled as a default outcome of DCHG/NPWS policy to accept high-density expanding urban seagull colonies in close proximity (homes, schools, hospitals et al.) are logically exposed to higher risks than communities not living with such conditions; the policy default needs to be changed with urgency to respect the overriding priority of public health and safety
- d) The EPA’s AREST project is showing leadership on the AMR environmental concerns; however “the level of testing on animals is negligible” – Professors McMahon, and Morris, CC meetings 3 and 4, respectively,
- e) prevention is better than cure – the Balbriggan community will not wait until we are the source of AMR cross-contamination data, and neither would other impacted communities if they had a similar knowledge and understanding of what is going on as we have.

3 BCC offers the above twelve recommendations based on experience, common sense and a close analysis of how the urban seagull issue is recognised and addressed in all neighbouring jurisdictions.

6. Policy deficits in Ireland vs. the United Kingdom and Europe.

- 1 The evidence since May 2016 has been and continues to be that urban seagull management policy as set and implemented in Ireland by DCHG/NPWS is demonstrably and majorly out of step with policy and practices in all neighbouring jurisdictions (UK and EU) – such that the policy deficits here continue to harm Irish citizens.
- 2 DCHG/NPWS is knowingly denying protections to urban communities around Ireland and are therefore inflicting, by default, increasingly uncivilised and dangerous conditions on communities where high-density urban gull colonies have established and are proliferating without managed resistance and without proactive species management.
- 3 DCHG/NPWS issues an annual State-wide Declaration on 1st May covering control measures for all otherwise protected bird species, including compliance conditions. DCHG also operates a case-by-case system for individual licences which involves site inspection, case evaluation, a recommendation, assessment against the legislation and a legal determination, and a written decision being sent back to the applicant. Typically the response time to an application is 6-8 weeks. The incubation period for gull eggs is 31-33 days and egg-laying starts around the end of April. Chicks hatch in late May through June. The Declaration is not published until well after egg-laying has commenced.
- 4 The Balbriggan Derogation approximates to a regional Class Licence that recognises that case-by-case licencing in the 8-10 week breeding window is not a feasible proposition in areas where high-density colonies are proliferating.
- 5 BCC has previously provided evidence of policy, licencing and operational practices in Northern Ireland, Scotland, Wales, England, France, The Netherlands, Belgium, and Denmark. Until 2019, the four UK countries operated a General Licencing scheme with no application process required; England had to introduce a new policy in 2020 due to unrelated legal matters in 2019. The UK also operates ‘Class (bulk/multi-case) Licences’ e.g. for Local Authorities and pest control companies.
- 6 DCHG/NPWS claims to be “obeying the law” when challenged regarding the serious deficiencies in Irish policy compared to all of our neighbours - thus, given the generality of urban gull issues and negative impacts, implying that all of our neighbours have not been obeying the law. DCHG/NPWS remains evasive about the fact that Northern Ireland, Scotland and Wales and England have operated General Licences for years with no application process or vetting required, and various types of ‘Class Licences’ for Local Authorities and Pest Control companies – all “in the interests of public health and safety”, as catered for in national legislation and in the EU Birds Directive.
- 7 BCC has been pursuing these matters with DCHG/NPWS with unanimous cross-party political support from our elected representatives since May 2016 and all of the ground described above has been covered in detail with verifiable evidence.
- 8 Table 1 below sets out a comparative analysis of the policy positions in England, Scotland, Wales and Northern Ireland versus the Republic of Ireland. The English policy is significant in that it is completely new and follows many years of having had a General Licence which

operated in an environment where majorly impacted UK regions, cities and towns have had a variety of Local Authority-based services which avail of contract services using flexible 'Class' Licences.

- 9 The policy principles set out in Table 1 are extracted directly from a letter to UK Minister Theresa Villiers from the Chair of NE Tony Juniper dated 30th Jan. 2020 (Appendix 1). BCC's submission (invited by the Dept.) to DCHG on 10th Jan 2020 (three weeks before the NE policy was published)– to the Stakeholders' Consultation phase for the 2020.21 State-wide Declaration contains every single one of the policy principles set out in the Juniper letter. BCC recently received an apology from the Dept. for its failure to acknowledge subsequent questions submitted by BCC regarding the Consultation and the outcome(s) – asked in our capacity as members of the CC, and as yet, as full CC members, has not received any replies to legitimate questions.
- 10 With regard to our EU neighbours' policies and operational practices, over many years, on urban seagull issues, BCC has previously provided evidence as follows:
- 1) The Netherlands Raad Van Stadt (Supreme Court, no appeal) ruling in August 2016 on urban gull controls – 13 counts on public health and safety grounds over-ruling a lower court injunction in 2014;
 - 2) The Port of Calais Annual Report (English translation provided by our MEP) of its gull control programme - based on public health and safety grounds – using GPS and Drone technology to map urban nests and support a systematic removal programme.
 - 3) NICE, France, Drone programme (YouTube) for locating and spraying urban nests with oil – on public health and safety grounds.
 - 4) Belgium, contraceptive feeding programme on public health and safety grounds.
 - 5) Aarhus, Denmark – lethal control on Herring gulls in residential areas due to noise – on public health and safety grounds.
 - 6) France, Spain, Portugal, Holland, Sweden. Serbia, Lithuania, UK and Ireland – consistent test results from urban gull colonies implicating gulls in Antimicrobial Resistance dispersal. There are similar tests globally – America, South America, South Africa, Middle East and Australia.
- 11 BCC believes that there is incontrovertible evidence to support similar programmes here in Ireland to deter seagulls from people's homes, schools, hospitals and places where human food is produced, stored, sold and consumed. We are dealing with the same seagull species, the same characteristics and behaviours, the same public health and safety threats and the same escalating negative impacts on entire communities here in Ireland.
- 12 Irish citizens – whole communities - are not being properly served in relation to the urban gull issue. DCHG/NPWS are responsible for this situation and at this stage there is a moral imperative for it to be addressed with some urgency.

Table 1

Policy Principles	UK - England	Rep. of Ireland	Comments
Give overriding priority to public health and safety	YES	NO	DCHG/NPWS treats public health and safety as being subordinate to conservation considerations, is in fact ambivalent on the public health issue, and since 2019 has only quoted ‘public safety’ on its case by case licences
Treat urban and rural living species separately for policy purposes because it has been proven that the two species groups generally do not mix	YES	NO	DCHG/NPWS conflates urban and rural species numbers in considering conservation status for policy purposes
Anticipate the season seeking applications in Feb with a closing date of 15 th March and an exceptions handling facility for later applications	YES	NO	DCHG/NPWS has persisted with 1 st May as its date for publishing its State-wide Derogation Declaration despite being repeatedly asked to bring this forward to February
A flexible and layered licencing scheme catering for single case applicants, ‘Class licences’ for Contractors, and Local Authorities with a 30-day response time	YES	NO	DCHG operates the Annual State-wide Declaration and also a fixed case-by-case Application/Licence system with a response time of 6-8 weeks; gull eggs incubate in 31 days.
No limits on numbers of nests, eggs and chicks to be removed from urban areas; a 5% limit on removals in rural areas	YES	NO	DCHG/NPWS has no policy statement on this; de facto, removals are majorly limited by policy and practice
Acknowledge the serious damage that urban gull colonies are doing, including to other species, and promote targeted attention to this	YES	NO	DCHG/NPWS does not acknowledge serious damage by gulls generally either to property or to other species; damage is only acknowledged by the Dept. in case licences and in parts of Balbriggan.
Gaps that may exist in research on urban seagulls to be filled over time – with no delay to implementation of the policy	YES	NO	DCHG/NPWS – by default and through inaction and inertia on the gull issue since 2016 has no policy on urban gull research, has not included any resource provisions for it in estimates, and knowingly continues to leave citizens exposed to health and safety risks.
Implement policy with full transparency, political and administrative cohesion, and clear and extensive publicity	YES	NO	DCHG/NPWS transparency is minimal to nil in terms of publicity, ignoring legitimate questions and persistently evasive.
Keep the policy under review	YES	YES	In 2016 DCHG claimed that the 2018 Review would address all perceived threats .It produced a 2 year+ Consultative Committee. It is now 2020 and none of the threats have been addressed, nor is there any commitment yet as to when they will be addressed. DCHG apparently intend to keep current policy under Review and without action indefinitely, irrespective of impacts on communities in Ireland.
<u>Alternatively – operate a General Licence Northern Ireland, Scotland and Wales</u>	YES	NO	DCHG/NPWS have to date refused to put urban gulls onto the State-wide Declaration – and have conceded a ‘Balbriggan only’ policy when it is clear that very many urban areas need protection.

7 New Seagull Policy for England

- 1 DCHG stated in the first CC meeting in June 2019 that “the UK had withdrawn its General Licence for seagulls”. This statement by DCHG was materially incorrect in a number of respects that remain uncorrected in CC minutes despite the fact that BCC has provided accurate official documents on the issue to the CC Chair. As a matter of fact, the issue raised by DCHG only affected England and was not related to seagulls. General Licences for bird controls (including seagulls) in Northern Ireland, Scotland and Wales remain in force and unaffected by the problem that arose in England.
- 2 BCC subsequently tracked the development of a new seagull policy for England. In April 2019 on foot of a legal action in England by environmentalist Chris Packham concerning indiscriminate culling of feral pigeons, Natural England (NE) was forced to withdraw its General Licence for wild bird controls. This affected controls for several species including seagulls and caused consternation due to the fact that it was in the breeding season.
- 3 Defra took the licencing function back from Natural England for a period of time and issued a public commitment to have new licencing arrangements early in 2020 well ahead of the breeding season. Work was done between Defra and Natural England through 2019 and the new English Policy was published in January 2020, early, as promised - see appendix 1.
- 4 In its new policy, NE did not include seagulls in the General Licence due to a concern about the species conservation status and reverted to an Application system. However, NE, for the first time ever, made a clear distinction between the conservation status of rural- and urban-living seagull colonies – the former being decreed as under pressure, whereas the latter (urbans) are acknowledged to be abundant and not under pressure. That is to say that urban seagulls are not ‘of conservation concern’. Accordingly, a control limit of just 5% was placed on rural (natural habitat) colonies which are ‘of conservation concern’, but “no limits apply to the removal of Herring Gull nests, eggs or chicks in urban areas”.
- 5 **The policy states that “generally, overriding priority is applied to public health and safety” and re-iterates the “protection of life and human health”.** The policy also anticipates the breeding season, calls for applications in February and sets a 30-day response time service level – i.e. licences will be granted even before nesting begins.
- 6 In all, BCC identified eight principles clearly set out by NE in what appears at face value to be a well-nuanced, strategic solution. BCC provided a copy of the policy and our views on it – taking it at face value – in a letter to the General Secretaries of DCHG and an Taoiseach’s Department on 9th March. We also provided a set of (invited) questions on the policy to the Chair of the CC on 13th March as he planned to talk to NE Chair Tony Juniper about the policy – see Appendix 2. We believe our questions are relevant for DCHG if the England policy is to be considered towards solutions here in Ireland.
- 7 One key concern of BCC, should the England policy in fact be referenced for a solution in Ireland is that all of the eight principles on which it is founded are clearly inter-dependent and cohesive. Any attempt to cherry-pick bits of the policy would, in our view, cause a failure to deliver on the public health and safety protections.

Minority Report from Balbriggan Community Committee to Minister, DCHG.

1 of two items:

Copy of letter to Secretaries General DCHG and Dept. of An Taoiseach covering the new seagull management policy for England announced 30th January 2020

C/O 118 Hampton Cove
Balbriggan
Co Dublin

Ms. Katherine Licken
Secretary General
Dept. Culture, Heritage and the Gaeltacht
23 Kildare Street
Dublin 2
D02 TD30

3rd March 2020

CC: Mr. Martin Fraser
Secretary General to the Department of an Taoiseach
Mr Derek McLoughlin
Chairman, Consultative Committee on the impacts of urban seagull colonies on communities

Re: Seagull population management:
Overriding priority of public health protection declared publicly in the new policy for England

Dear Secretary General,

We have received (attached) a copy of a letter dated 30th January 2020 from the Chair of Natural England (NE) to the UK Secretary of State for Environment, Food and Rural Affairs. No doubt this letter is already receiving urgent attention in your Department.

Given the import of the statements in this letter, and the strong parallels between the issues arising from urban seagull colonies which impact seriously and negatively on communities in Ireland, it clearly requires urgent and commensurate policy and operational responses from your Department in the legitimate interests of Irish citizens. NE's policy position will be evidence-based given the directness and strength of the statements made to the Secretary of State as published. As the statutory body for wildlife management for England, NE has the credentials and scientific and ecological expertise to underpin its public authority.

We identify some of the key statements in the NE letter as follows:

Paragraph 7 - "...there are situations where it is essential to control these gull species for purposes which include public health and safety, protection from serious damage and conservation."

Paragraph 10 "...generally protecting human life and health will be the overriding priority."

Paragraph 14 "Urban populations tend to be healthier and appear more resistant to decline from lethal control by having better breeding success rates. Control levels of nests, eggs and chicks will not be limited in these areas."

Paragraph 15 "Natural England will continue to promote the use of non-lethal methods that reduce opportunities for gulls to nest and scavenge in problem areas within the build environment."

Paragraph 17 "We are working with Defra colleagues to explore options for filling current gaps in evidence around urban populations. Our current proposal, based on best available evidence, will therefore be subject to review as the evidence base develops further."

The new licencing regime that has been devised and implemented just eight months on from when NE had to withdraw its General Licence due to the Chris Packham Legal case last April contains the following key features:

1. Applications for individual licences for gull controls are encouraged from February onwards –with a closing date of 15th March i.e. before nesting/breeding has commenced, typically around the end of April/early May with chicks hatching in early June
2. NE has set a 30 day service response time for issuing licences/replies-i.e. in most cases the licence will be issued before nesting/laying has commenced
3. Natural England will continue to accept licence applications outside this period and will provide licences where there is a clearly demonstrated need for lethal control
4. Notably, the publicity materials around the new policy emphasise public health and safety, and make specific references to schools, universities and hospitals.

Another hugely significant and major change of policy is the clear separation of the conservation status of urban and rural living gull species for policy and control and management purposes. Essentially, unlike DCHG/NPWS, NE no longer conflates urban and rural population status and statistics within a single uniform policy. This change respects the fact the urban living species do not mix with or revert to living with seaward/rural living species. This policy evolution also recognises and addresses the facts that while significant declines in species numbers may exist in traditional habitat areas, it is essential for prudential public policy to identify, heed and respond to circumstances where spikes in populations exist in other (typically urban) areas.

You will be aware that the Balbriggan Community Committee (BCC) has been working assiduously on this issue since May 2016. While the partial Derogation introduced in 2017 enables handling of extreme/emergency cases, many serious deficiencies in the Balbriggan Derogation have persisted and need to be addressed. Your Department has held our detailed submissions which set out our position for a number of years now. We refer you to our latest submission on 10th January 2020 in response to your Department's invitation to us to partake in the Stakeholders' Public Consultation phase of the preparations for the 2020.21 Derogations Declaration. We have submitted follow up questions to your Department in this regard and await an acknowledgement and a substantive response.

With regard to the Consultative Committee, it is now beyond any doubt to us that no substantive initiatives have been made in the interests of citizens, nor do we have any confidence that substantive initiatives to mitigate impacts on communities will be made in anything like the essential timeframe. The contents of the NE letter are so compelling that they warrant an immediate and urgent policy and operational response from your Department in time for the 2020.21 Derogation Declaration and beyond. We emphasise that in its letter to the Secretary of State, NE has not resiled from making definitive and authoritative statements about the overriding priority of "protecting human life and health".

Irish citizens have been knowingly left by your Department without any genuine protections, without any justification, for several years now in comparison with citizens in Northern Ireland, England, Scotland, Wales and Northern Europe. You will have noted in the NE letter (paragraph 17) that research gaps that may exist in relation to urban gulls will be addressed over time by NE, but clearly are subordinate to the interests of public health and safety of citizens and will not in any way delay the implementation of the new policy.

Any continuance of the notion from the Department, the CC or otherwise, that Ireland has to do its own research to reinvent the wheel - on urban gulls here in advance of any material change to policy here is untenable in the light of the above, and more importantly would constitute a grave failure by your Department, which has overall responsibility in these matters, to protect Irish citizens. Therefore please spare our community the notion that research is needed here to assess whether Irish urban gulls are or are not materially similar to English urban gulls and/or that their respective behaviours and negative impacts on communities are materially similar or not. No doubt you could envisage the outcry here if in relation to the Covid-19 virus Ireland decided to do its own research and risk assessments independent of authoritative international bodies. Of course the scale and impact are vastly different; the comparison of the policy behaviours, is nonetheless is valid.

NE and the National Parks and Wildlife Service (NPWS)/ Department have closely analogous functions and we do not consider that there is any other public body here carrying out similar integrated functions as regards wildlife management. Accordingly, we respectfully ask the following questions:

1. As your Department has not yet, to our knowledge at least, accepted that it has primary responsibility for implementation for Article 9.1.a) in the interests of **both** public health and safety, do you accept the NE statement made clearly in the context of managing urban gull populations that "protecting human life and health is an overriding priority" as an operating principle for your Department? If you do not accept this position, will you set out your reasons?
2. If it is not your Department's responsibility, what other public body has this responsibility, are they aware of this responsibility, and have they accepted this responsibility? In considering these questions we refer you to official correspondence and PQ responses from Ministers Murphy and Harris concerning the respective roles of the three Departments, and in particular the responsibility of your Department?
3. Is it your intention to communicate and comment on the essence of the NE statements and policy to the relevant public bodies, particularly though not exclusively in relation to schools, universities and hospitals, and also appropriately to the general public in urban areas throughout the country affected by high density gull colonies? The communications standards observed by NE and Defra are a model of openness, transparency and efficiency.

4. Will you ensure that public bodies and the general public here are fully aware of the availability of licences your from Department to protect their public health and safety, and will you ensure that your Department’s case-by-case licencing system and approach is fully adequate to meet essential timelines – again having regard to NE’s policy to seek applications from February onwards – i.e. 2 months in advance of nesting - and to respond to applicants within 30 days? And if it is the case that resource constraints in your Department prevent the rapid service response that has been set up by NE, will your Department expand the State-wide Declaration approach – in order to respect “the overriding priority of protection of life and public health”, thus also emulating the policy in Northern Ireland, Scotland and Wales?

In conclusion, we advise that our community committee has considered with extreme care our approach to this matter and it is informed by advice from a number of political sources. Please note that we have circulated our letter and the NE letter to our TDs, and our MEP and we will be circulating this material and responses received to our wider community committee. Given the intense work underway towards forming a Government, and respecting the demands this places on all concerned, we are deferring our full briefing to our TDs until an appropriate opportunity arises at their convenience. We have copied these letters to the Secretary General of an Taoiseach’s Department due to the serious lack of confidence in our community in your Department that is based on all of our experiences of dealing with it since May 2016. There are also important cross-Department/Agency responsibilities here which we believe may warrant a whole-of-Government response.

Yours Sincerely,

Balbriggan Community Committee on urban seagulls and their negative impacts on people

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Date: 30/01/20

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Seacole Building
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Dear Secretary of State,

I am writing to inform you of the licensing arrangements that Natural England is developing for the coming year for the control of herring gulls and lesser black-backed gulls. This is in pursuance of the licensing functions you have delegated to Natural England and in accordance with the Wildlife and Countryside Act 1981 and the Government's policy framework.

As you are aware, these two species of gull were not included in the three general licences issued by Defra last summer on account of significant concerns about their conservation status.

Both herring gull and lesser black-backed gull have been listed as species under threat in the publication Birds of Conservation Concern 4: the Red List for Birds, published by the BTO in December 2015.

The breeding population of herring gull has fallen by 60% in recent decades, with lesser black-backed gulls declining by an estimated 48%, and there is a particular concern about drastic declines in the numbers of lesser black-backed gulls at breeding sites classified as Special Protection Areas.

In June 2019, Natural England gave a public commitment to develop new licensing arrangements ready for the 2020 bird breeding season.

Our arrangements will support the Government's commitment to protect and restore the natural environment and be consistent with the UK's legal obligation under international conventions to maintain the conservation status of wild bird species, including gulls, within England.

We recognise that there are situations where it is essential to control these gull species for purposes which include public health and safety, protection from serious damage, and conservation. It is important that our arrangements enable stakeholders to manage any conflicts that occur between humans and these gulls in a way that does not affect the species' long-term survival.

Information gathered from emergency individual licences issued in 2019 indicate that a very high level of lethal control of gulls has been undertaken. Having assessed this level of lethal control in comparison with natural mortality levels, we believe that continuing to license control at the current rate would contribute substantially to the continued decline of herring gull and lesser black-backed gull species. Therefore we have concluded that reductions in the numbers killed or taken are necessary to safeguard the long-term viability of these species in this country.

We have re-issued a class licence this year to permit the control of certain wild bird species necessary to preserve air safety and this will continue to cover herring gull and lesser black-backed gulls. The licence was amended for 2020 to introduce a requirement for registered users to report to Natural England the scale of control of these species (and great black-backed gulls) which they expect to undertake in the coming year.

Beyond this, we will license gull control through individual licences, which will need to be prioritised. We will consider the strength of need in each licence application individually but generally protecting human life and health will be the overriding priority. Any control undertaken under other purposes such as preventing serious damage and conserving wild birds and flora or fauna will need to be targeted.

This process will provide consistency and clarity for applicants, and will allow Natural England to assess the merit of each proposal and potential effects on the gull species, factoring in the cumulative impact of all other licensed control. It will also enable us to monitor the number of gulls killed or taken over the year.

This approach also takes into account the strength of local populations of the gull species which can vary between urban and rural areas. In rural areas, where lethal control may have contributed to declining populations, we have identified a sustainable number of birds that could be killed or taken. This is equivalent to no more than 5% of the natural mortality total of each species.

Natural England has concluded that this level will not harm the conservation status of these species and is a recognised benchmark for the sustainable hunting of birds (European Commission guidance, 2008).

Urban populations tend to be healthier and appear more resistant to decline from lethal control by having better breeding success rates. Control levels of nests, eggs and chicks will not be limited in these areas.

Natural England will continue to promote the use of non-lethal methods that reduce opportunities for gulls to nest and scavenge in problem areas within the built environment. In order to ensure a more harmonious coexistence of people and gulls, applicants will be encouraged to put in place an integrated gull management strategy that includes alternatives to lethal control. In many cases, this will mean working with other householders, businesses and local authorities to resolve problems experienced in the areas used by gulls.

Natural England will seek input from stakeholder organisations and business leaders to provide further guidance on how integrated gull management strategies may be demonstrated.

As part of our work we have identified the need to undertake research into gull populations in urban areas in order to fill the current gaps in evidence. We are working with Defra colleagues to explore options for filling current gaps in evidence around urban gull populations. Our current proposals, based on best available evidence, will therefore be subject to review as the evidence base develops further.

Customers will be encouraged to submit individual licence applications in February and March in preparation for the bird breeding season, which is consistent with the majority of user needs. This window will enable Natural England to assess the cumulative scale of control across the applications submitted and take this into account in prioritising the licences to be granted.

Natural England will continue to accept licence applications outside this period and will provide licences where there is a clearly demonstrated need for lethal control.

Yours sincerely

Tony Juniper
Chair, Natural England
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13th March 2020

To:

Chairperson

Consultative Committee the review the impacts of urban gull colonies on communities

From: Balbriggan Community Committee

Suggested discussion points and questions for discussion with Natural England Chairman,

1. **Would you have key pointers you could share with us on that?**
2. **You must have achieved a reasonable consensus between stakeholders – administrative, conservation, political, Local Authorities, Service Providers?**
3. **We haven't seen any public statements on the policy yet from the conservation groups e.g. RSPB, could you summarise the views on the conservation side?**
4. **The overriding public health and safety priority seems very explicit particularly in relation to urban areas, whereas historically it has been generally perceived as a bit woolly and somewhat conditional or equivocal, and indeed has been contentious:**
 - **can you say who would have been representing the interests of citizens/communities in the policy development process?**
 - **how does that overriding priority get reflected pragmatically in the Application processes and decision making e.g.**
 - **do you have a template or benchmarks for assessing Applications' circumstances and cases made on public health and safety grounds?**
 - **in setting no limits on removal of nests, eggs and chicks in urban areas – while obviously not implying an eradication of urban gulls – NE seems to be making a clear statement and acknowledgement about how serious the negative impacts of urban gull colonies can be on human living and communities,**
 - **taken with the other very clear principles and measures set out in the policy, is it fair to say that a concerted effort is being made to teach gulls where they can and can't breed and live in urban areas?**
 - **in other words, is the co-existence objective to arrive at a situation where urban gulls live undisturbed in non-residential, not on schools or hospitals, and non-amenity areas within the built environment e.g. industrial estates/complexes, warehouse campuses and similar?**
 - **would NE be moving towards advising sectors e.g. schools, universities and hospitals to control urban gull species on public health and safety grounds – within the 'overriding priority' designation in the policy?**
 - **the resources picture is clearly mixed and complex when you look across the country– would schools and hospitals be expected to pay for species control services themselves, and would a lack of such resources leave impacted schools etc. living with a recognised public health and safety problem?**

- does NE envisage movement towards a control standard for schools and hospitals under the public health and safety priority?
 - Even though you have brought forward the dates, if you had a high volume of applications do you have a cut-off default where all public health and safety applications would be approved – given the ‘overriding’ priority status?
5. There is now considerable policy divergence between England and Northern Ireland – which is very relevant to us in the Republic of Ireland, and with Wales and Scotland – could you share your views on this, looking forward?
 6. As the UK has left the EU, has NE been considering continuing with policy alignment or potential divergence?

The policy seems comprehensive and well nuanced, e.g. recognising addressing ecology differences between rural and urban living gulls. You seem to be catering for strong interventions in urban areas – NE CEO Marian Spain referred to “areas of most need” in recent interviews.

7. Is this a formal recognition that the urban and rural-living groups do not really mix and are unlikely to mix?
8. Conservation groups have tended (perhaps privately) to see urban living as a refuge, with some hope or expectation that they might go back to sea if habitat was restored – is the new policy a statement/recognition that this is not going to happen (Rock, Coulson) – ergo creating a necessary reshaping of the policy?
9. Is our understanding correct viz. that:
 - a) In changing the policy NE are targeting apparent abuses of the General Licence primarily in the rural setting, specifically excessive culling
 - b) In the revised policy, urban areas with high-density colonies and *an accepted range of problems* the gulls are causing are largely served by Local Authorities and/or Registered Approved Contractors?
 - is that what keeps your Application numbers low/manageable?
 - Does NE invite contractors to register for species control work?
 - c) Schools, Universities, Hospitals are normally protected on public health and safety grounds?
10. Pressure here is building in residential areas where high density colonies (recently sampled in three medium-sized towns with Drone/Camera work) are expanding quite quickly, also in schools and hospitals, and on and around supermarkets, pubs, restaurants and similar.
 - presumably this profile matches yours in terms of “areas of most need”?
 - the biggest and recurring problems reported here are
 - very high levels of noise up to 22/7 for months April through to October

- noise is increasingly recognised as a public health issue and a safety issue – a current EU Environment Committee is working towards a night-time noise target of 40db; a list of serious illnesses to is now linked noise and sleep disturbance
- often with nests throughout housing estates, sometimes with multiple nests on properties and
- also high levels of faecal mess on and around houses and gardens
- gull aggression is known and understood around breeding and chick rearing, but is increasingly reported as aggressive foraging, very often in our schools
- in summary, what would be your *accepted range of problems* in urban areas that would be given routine approval?

Regarding NE's requirement for an Integrated Management Plan with applications for urban sites, we're interpreting your licencing system as being layered in a design that accommodates many scenarios from a single domestic/residential application right up to large sites that could include a colony or even discrete colonies on a large campus.

11. Is our interpretation correct and could we discuss this a little?
12. It seems generally accepted for some time now that what are traditionally referred to as "alternative measures", are largely ineffective in many cases, and that systematic, repetitive nest removal is the only viable option – is that likely to be generally accepted on your applications, in particularly those on health and safety grounds?
13. Strict control of food waste is often put forward as a vital component of management plans, however small recent studies suggest that urban gulls rely on urban sources mainly for opportunistic snacking, and they travel to rural and coastal sources for most of their regular food supplies – is NE doing any research work on this?
14. Did NE follow the Dutch Supreme Court case in August where three large Municipalities of Amsterdam won a ruling (all 13 counts, on public health and safety grounds) permitting them to pursue all control measures for a three-year research period – following which the most effective control measures would be continued to bring the problem under control?
15. Does the licence design cater for a group application e.g. from a registered residents/tenants association committee on behalf of a housing estate – e.g. as a way of assisting elderly residents?
16. Have you a refusal template or set of criteria for when licence applications will be rejected.
17. What resources has NE that it can bring to bear on the "applications processing season"?
18. What resources has NE for inspection, investigation and follow-up?

There is clear evidence that urban gull colonies do serious damage and cause large cost to business – both property and infrastructure, often requiring high expenditure and recurring maintenance

19. As urban flocks continue to thrive and expand, where does NE see this ‘damage issue’ going? Do you see a point at which the burden will become excessive and will be rejected by society?

There is also clear evidence that urban gulls do damage to other bird and wildlife species.

20. As with the property/infrastructure damage, where does NE see the ‘other species damage’ issue going as urban gull flocks thrive?

Association of urban gulls (and other wildlife species) with the Antimicrobial Resistance (AMR) threat.

21. Has NE been monitoring the AMR threat?
22. Professor Kathryn Arnold, York University set out policy considerations in 2016; the EU Commission AMR Strategy, and recently member states AMR plans have acknowledged the threat from animals in the Environment. ECDPC have included gulls as a species of concern. Mediterranean Gull species is implicated in AMR variant CPE (Barcelona Public Health Municipal Authority, 2017)

The current research position seems to be that urban gull’s behaviours and human waste mismanagement behaviours expose the species to human-relevant AMR and contamination has been shown world-wide. However it is difficult to test/track whether gulls can or are transmitting AMR to humans. Given the seriousness of AMR, informed communities are pressing for “an abundance of caution approach” towards keeping breeding gulls away from people’s homes, schools, hospitals and places involved with food production/consumption.

Has NE been monitoring this potential threat?

Are you aware of research/testing in the UK?

Discuss Irish AREST project?

NE states in the policy that any gaps in urban gull research will be filled over time in partnership with Defra

23. Did NE have pushback from conservation groups on this twin track approach, and if so can you discuss the argument and the outcome?
24. Is NE/Defra looking at resources for urban gull research?

It must be the case that NE has engendered strong support and buy-in to be able to implement the policy so quickly.

25. NE’s transparency – including your own letter to the Minister – is noteworthy and indeed exemplary. We had seen former Prime Minister Cameron’s call for ‘a big conversation’ on the urban gull issue, and also the National debate in Westminster in 2017. Also, at Local Government level many of your Councils are active and vocal on the issue.

May I ask if there is general political awareness of and support for the policy?

Did NE conduct any briefings/seminars with political/Government representatives during the policy formulation?

26. In terms of NE's relationship with Defra

Communications:

27. Given the devolved nature of NE's policy and government advisory function, how do you approach the issue of communications – across the board, e.g.

- **with and between Defra and NE**
- **with and between Central Government and NE**
- **with and between Local Government**
- **with and between client stakeholders**
- **what is the 'stakeholder' structure and communications method(s) for the urban setting?**

Looking forward, The negative impacts of urban gulls on communities are increasingly intolerable and determined resistance is clearly growing – perhaps with serious negative consequences for the species eventually

28. Does NE have active measures for gauging civil objection and non-compliance with the law e.g. as was discussed at length in the 2017 Parliament debate?

29. Do you consider that the new NE policy is tacking in a direction to reduce negative impacts on communities towards the co-existence objective?

30. Does NE have further plans and ideas for policy evolution in these regards that it can discuss?

AOB

Consultative Committee to undertake a review of the issues surrounding the impact of gulls in urban areas

First interim report on progress of the urban gull consultative committee

Chairman Dr Derek McLoughlin

March 2020

1 Overview

Following a recommendation of the Report on the Review of the Derogation Process under Article 9 of the EU Birds Directive, a Consultative Committee (CC) has been convened by the Department of Culture, Heritage and the Gaeltacht (DCHG) to consider the impact of gulls in urban areas and to provide recommendations as appropriate to deal with such impacts within the scope of national and European legislation. These recommendations will then be presented to the Minister and the DCHG for implementation as appropriate.

The CC comprises representatives of BirdWatch Ireland, Balbriggan Community Committee (BCC), Fingal County Council, and the National Parks and Wildlife Service (NPWS) on behalf of the Department of Culture, Heritage and the Gaeltacht (DCHG). It is supported by a secretariat from NPWS and an independent chairperson.

The CC has met on four occasions: the 14th June, which was preceded by individual meetings between each stakeholder group and the secretary and chair; the 16th October; the 25th November; and 4th February 2020. This is the first report of the progress of the CC.

The first meeting (CC1) provided members with an opportunity to discuss urban gulls in broad terms, with topics including gull ecology, impacts of gulls on the general urban public, management of urban gull populations, research requirements and potential solutions to human – gull conflict. The Terms of Reference of the group were also agreed and suggestions for speakers on pertinent topics were provided by members. Key issues arising from this meeting were the potential public health implications arising from gulls in urban areas and control measures used to deter nesting gulls, conservation implications of potential controls, and the potential research requirements.

The second meeting (CC2) focused in greater detail on aspects of public health, with a presentation from Associate Professor Barry McMahon who discussed his work on Zoonoses, including Anti-Microbial Resistant (AMR) contamination and his experience of the potential health risk of this in the environment. This was followed by a presentation from Mr Peter Rock, researcher with the University of Bristol, on his experience of 40 years researching urban gulls. Mr Rock described the situation regarding urban gulls in several UK towns and cities.

The third meeting comprised a presentation by Dr Gary Goggins, Environmental Sociologist, NUIG, which provided an overview of how the work of the CC fits into a participatory model. This

presentation was followed by a workshop where all members presented their views on solutions and gaps relating to the issues arising from urban gulls. These views were synthesised during the workshop and are presented as an appendix to this report.

The fourth meeting (CC4) focused on AMR with a presentation from Professor Dearbhaile Morris, Director of the EPA-sponsored AREST Project investigating AMR contamination in the environment.

The discussions of the committee and the information provided by the invited experts can be distilled into a number of salient points which are referred to in more detail below.

2 Terms of Reference

The Terms of Reference of the Consultative Committee as approved by the CC at its first meeting are as follows:

- To ascertain the impact of gulls on urban dwelling communities and to identify all suitable actions that may be addressed by Government Departments, State Agencies, local authorities, business premises, community groups, other stakeholders and individuals in urban areas in accordance with national and EU legislation.
- To provide observations and make recommendations on scientific research/monitoring projects that will inform suitable actions in relation to gulls.
- Secure the attendance of relevant experts and other interested parties to assist the Committee in its deliberations and appoint additional expertise to the Committee as required.
- Actions and recommendations to be agreed by the Committee taking account of the views of each of its members
- Interim report to be provided to the Department on progress by the Consultative Committee by the end of September 2019 and further reports to be provided as agreed between the Consultative Committee and the Department.
- The Consultative Committee is formed for an initial period of two years.

3 Observations on the functioning of the committee

Agenda items are circulated by the secretary in advance of meeting. In order to objectively manage a diverse range of views amongst the members of the committee, in general, each agenda item is presented by the chair and each group has an allocated period of time to contribute their view. This has ensured that a more or less equal amount of time is available to each group to express their views on a given item.

The input of each group to the meeting is recorded by the committee secretary in the form of hand-written notes. These form the basis of minutes which are forwarded to the chair for approval, and then circulated to the committee members. Initially, the finalisation and committee agreement on the minutes of the first meeting (CC1) was not possible, due to a divergence of views on the level of detail to be contained in the minutes, with one of the member groups (Balbriggan Community Committee) requesting detailed minutes of the meeting and other members requesting more concise minutes which would at the same time reflect the issues discussed, main points made by different groups and the action points arising. In order to resolve this disagreement, the chair made an executive decision to take concise minutes that succinctly record the key points, while ensuring that all committee members' views are broadly captured. The rationale for this approach, in the

view of the chair, is that detailed/verbatim minutes are unwieldy, excessively long, and the key points may be lost within such a document and it potentially creates an environment that is not conducive to open, frank debate. This could potentially serve to distract the committee from its key focus.

The circulation of third-party literature and information pertaining to the discussion topics was raised at CC2 whereby some members expressed reluctance to receive information in areas that they may not be qualified, such as public health. It was decided that the process for dissemination of information to the CC should be through the chair, who will decide on the relevance of the material in terms of the expertise of the committee. Topics, such as public health, sociology, etc, can be presented to the committee by experts in that area to ensure clear fact-based evidence is provided to its members.

The presentation by Dr Gary Goggins in CC3 provided an overview of how participatory approaches can be developed in addressing human-environment concerns. This contribution provided a sense of context regarding the progress of the CC in terms of participation of the various stakeholders and observation of the functioning of the CC. The key points of Dr Goggins' presentation include:

- Importance of both scientific and experiential expertise to inform and develop robust policy and to tackle societal challenges
- Long-term success requires financial and technical support for productive interaction and engagement between stakeholders
- Social capital, trust and relationships are necessary to create and share knowledge
- Effective communication underpins all other concerns and is vital for successful participatory decision-making processes

4 Consultative committee topics of discussion during the course of CC1, CC2, CC3 and CC4

4.1 Gull ecology

Recent figures of a national survey¹ of Herring Gull (2015-2018) estimated 10,333 breeding pairs, which is an increase of 87%² since Seabird 2000 (the last major national gull survey), but an overall decline of 33% since the mid-1980s. A drone survey undertaken by FCC during the 2018 breeding season indicates more than 500 pairs in a discrete area of North Dublin targeted for survey.

Information on the movement patterns and other aspects of urban gulls appears to be lacking in Ireland. This lack of information appears to create a gap in terms of understanding the nature of their foraging areas and identifying potential areas where some action could be taken in terms of ensuring the removal of food items, etc.

4.2 Impacts of gulls on urban dwellers and public health

There is a divergence of views related to the impacts of gulls on urban dwellers. Some members presented evidence of a range of impacts, including aggressive behaviour, sleep deprivation in humans as a result of the noise of nesting gulls, damage to property and the potential for gulls to

¹ Cummins, S., Lauder, C., Lauder, A. & Tierney, T. D. (2019) The Status of Ireland's Breeding Seabirds: Birds Directive Article 12 Reporting 2013 – 2018. *Irish Wildlife Manuals*, No. 114. National Parks and Wildlife Service, Department of Culture, Heritage and the Gaeltacht, Ireland

² Although an 87% increase was recorded between the gross totals of the two survey periods it may not accurately describe the actual population change due to differing levels of survey effort, coverage etc.

cause injury and to transfer disease and anti-microbial resistance (AMR) contamination. Other CC members presented their experience of members of the general public with both positive and negative opinions on the impacts of gulls in urban areas.

Considerable concern was raised by one of the CC members (Balbriggan Community Committee) regarding the public health implications of nesting gulls on or near homes, schools, food production premises, sports clubs and areas with vulnerable groups, such as hospitals and businesses. This group expressed that *“the 30 year transparent history of licensing “in the interests of public health and safety” by NPWS is/was set at the appropriate level of expertise for public health and safety considerations i.e., decisions to issue licences for over 30 years on public health and safety grounds have been made by NPWS officials without the need for clinical medical expertise and without the need for referral to external clinical or medical expertise.”*

The NPWS have previously granted licences under Section 42 of the Wildlife Act under the criteria of public health, albeit in the absence of any specific health expertise.

The key facets of the health concern for BCC include the potential for AMR contamination and disease transmission from gulls to humans, direct injury to humans and the potential impacts of long-term sleep deprivation of the public due to the noise of high densities of gulls in urban areas.

Associate Professor Barry McMahon presented on his experience of AMR in wildlife and on the latest research in this area. Based on the presentation of Associate Professor Mc Mahon, there is currently no conclusive scientific link between the risk of AMR contamination from gulls and humans. He suggested that of over 250 peer reviewed papers related to studies of general wildlife (some including gulls) and AMR, due to the nature of these studies, it is difficult to identify the nature of wildlife as a source of AMR.

Associate Professor McMahon recommended to the CC that Professor Martin Cormican (Clinical head of the AMR risk response and management in Irish Hospitals) and Professor Dearbhaile Morris also be invited to present on the topic of AMR.

Professor Dearbhaile Morris presented an overview of her work on the EPA-sponsored AREST Project investigating AMR contamination in the environment. The aim of the AREST Project is to identify the role healthcare, wildlife, farmed and companion animals play in the transmission and persistence of AMR in the aquatic environment. Professor Morris highlighted the severe health risks of AMR and its ubiquity in the Irish environment. She noted that Ireland is one of the leading countries of research on AMR in the environment.

4.3 Controlling gull populations

Gull (and all wild bird) populations in Ireland are protected under the Birds Directive and the Wildlife Act. Derogations from this can be obtained under Article 9 of the Birds Directive or Section 22 of the Wildlife Act. Section 22 licences have been granted on a number of occasions over the past number of years authorising the disturbance/destruction of gull nests. A general derogation currently applies to Herring, Lesser, and Great Black-backed Gull in the environs of Balbriggan, Co. Dublin and has been reissued annually since May 2017. Although a 2017 survey³ provided numbers of nests and eggs destroyed that year in c.15% of the derogation area, to date, there does not appear to have been any systematic assessment of the impact of the derogations on the overall gull populations.

³ Balbriggan Community Group. 2017. *Report on the efforts of a community to mitigate escalating and serious public safety and public health threats and other serious issues caused by a rapidly expanding urban gull population colonising and breeding in our town and its districts.* Unpublished report to NPWS

Mr Peter Rock presented an overview of his experience working with urban gulls over a 40 year period. Mr Rock made the following observations regarding the human/gull conflict in urban areas of the UK and several EU member states:

- Non-lethal control measures provided by many pest control companies, including spikes, deterrent artificial birds, netting, etc., do not appear to work and are generally futile:
- Persistent nest removal will also result in displacement of gulls, whereby they will simply move to another area/town:
- Gulls can nest at sites up to 250km from their natal areas and measures designed to control gull numbers through culling, nest removal and egg replacement will generally not be successful in reducing the overall population due to the replacement of these birds with those from areas further afield:
- Where there is an identified risk to vulnerable groups, such as at hospitals, daily removal of nests throughout the nesting season (March through July) may locally reduce any perceived risk.

4.4 Legal context

Whilst the breadth of topics discussed in the course of the CC meetings to date are broad and highlight the issues to be resolved, several topics make assumptions of the legal context surrounding urban gulls that may or may not be correct.

It is the view of the BCC that the governing legislation specifically caters for “the interests” of citizens in these regards and there appears to be no legal basis for any assumptions that communities would be required to suffer serious negative impacts in the interests of an animal species.

5 Consultative Committee collaboration

5.1 Background to workshop

The items of discussion in CC1 and CC2 can be divided into four broad categories: 1) urban gull ecology; 2) public health and safety; 3) control of urban gulls and; 4) communications. In order to ascertain the impact of gulls on urban dwelling communities and to provide observations and make recommendations on scientific research/monitoring projects that will inform suitable actions in relation to gulls, each of the CC members were asked to identify any gaps in knowledge and, or, solutions relating to urban gulls. These were categorised under the four headings during a workshop in CC3 and an opportunity was given to the members to review and augment their input following the workshop.

5.2 Actions suggested by the CC

Table 1 captured the output of the CC workshop designed to give all members an opportunity to express what they see as gaps in our knowledge of urban gull–human interaction. Many of the topics raised are common throughout the CC members, with some being specific to individual members.

6 Iterations of interim report and updated recommendations

6.1 Interim report iterations

This document represents the fourth draft of the interim report. Earlier drafts (see Table 2) were amended based on feedback from CC members. Version 3 of the report comprised a range of recommendations that had been accepted by all members of the CC except for BCC, for reasons contained in their accompanying Minority Report. Version 4 removed all recommendations in an effort to provide the Minister with an official update on the progress of the CC. BCC sought a recommendation to be included in the report in the interests of citizens, and in particular “in the interests of public health and safety” as catered for in Article 9(1)(a) of the Birds Directive. The absence of such a recommendation contributed significantly to BCC’s decision to submit a Minority Report.

BCC then suggested that the Natural England approach towards handling derogations for Lesser Black-backed and Herring Gulls may offer a useful contribution to a solution in Ireland provided the apparent principles underpinning it were implemented in full (“*i.e.* not ‘cherry picked’” BCC pers. comm.). The other members of the CC agreed that such an approach, or elements thereof, could be considered for Ireland, with the exception of BWI, who feel that it does not comply with the EU Birds Directive. Based on the Natural England (NE) position, the chair amended the recommendations of V3 of the interim report to take account of the licensing framework enacted by NE in February 2020, albeit yet untested. Although the UK is in the process of leaving the EU and will not be bound by the EU Birds Directive, it appears the approach follows similar criteria to that set out in Article 9 of the EU Birds Directive. It should be also noted that interpretation of the NE approach presented below is made based on published documents and these may result in some variation of what is actually foreseen in practice.

6.2 Summary of Natural England approach to licensing for the control of gulls

In summary, the licensing approach developed by NE seeks to enhance the level of protection of Lesser Black-backed and Herring Gulls through tightening their previous arrangement of general derogations where certain criteria were met. It is noted that the previous approach resulted in unsustainable levels of lethal control. It should also be noted that the NE approach allows for control of gulls (in addition to destruction of nests).

NE cite the necessity to control gull species for reasons listed in Article 9 including public health and safety, air safety, protection from serious damage to crops, livestock, forests, fisheries and water, and protection of flora and fauna.

NE will licence gull control through individual licences which will be considered on a case-by-case basis. Individual licences pertaining to the protection of human health and safety will be prioritised over the control of gulls for other purposes such as preventing serious damage to crops, livestock, forests, fisheries and water, and protection of flora and fauna.

NE cite that their licensing approach will allow the assessment of the merits of each application and the potential impacts on target species, including cumulative impacts and monitoring of the numbers controlled.

They have considered rural and urban gulls separately and suggested a 5% maximum control rate of rural gulls to be sustainable, whilst there is no limit on controls for urban gulls.

Applicants for licences are encouraged to put in place an integrated gull management strategy that comprises working with householders, businesses and local authorities to resolve problems experienced in the areas used by gulls. NE seek input from stakeholder groups to provide further guidance on how gull management strategies may be demonstrated.

NE has identified gaps in the current evidence and acknowledge that the current approach is subject to review as evidence develops further, for example on the level of gull control in urban areas.

It is the intention of NE to encourage applicants to submit individual licence applications in February and March in preparation for the bird breeding season, which allows a window for them to assess cumulative impact and prioritise licences throughout the country. They will accept licence applications outside of this period where there is a clearly demonstrated need for lethal control.

6.3 Feedback of CC regarding potential use of similar framework to that of Natural England⁴

Feedback on the potential use of a similar framework to that of NE was provided by all members. Notwithstanding that the NE policy is at an early stage and untested, this feedback is summarised to provide context for aspects of the recommendations presented herein.

BWI view the case-by-case approach as being positive, but are of the view that many aspects do not conform to Birds Directive Article 9 requirements or rulings of the European Court of Justice. They are concerned that NE have not established that the threat to human health or safety is real, quantified and significant, and are concerned with the absence of the requirement to prove that there is 'no other satisfactory solution' as specified in Article 9(1). In addition, the conditions of risk to public health and safety, or damage, etc, and scientific evidence of such, are not required to be captured in the licensing process established by NE. This also appears to fall short of EU law. Furthermore, it is acknowledged by NE that they do not have accurate or recent data of gull numbers nationally. This is similar to the Irish situation. Article 9 (4) requires that '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'. This final paragraph refers to the conservation of the species. BirdWatch Ireland also stated that the Royal Society for the Protection of Birds (RSPB) in the UK have similar and additional concerns in relation to the application of the new NE approach in practice.

BCC, who initially brought this new policy to the attention of the chair, regard it as well nuanced with the potential to benefit the interim report recommendations. They note that this policy assigns "overriding priority" to public health and safety and states that this is "essential" in the context of urban gull populations. In addition, BCC feel the fact that there are no limits set on the removal of nests, eggs and chicks in urban areas is recognition of the negative impacts of breeding colonies on urban areas. They suspect that the 30-day application window anticipates the breeding season well. The policy also appears to be flexible in terms of accommodating single licenses to broader spectrum 'class' licences. They also note that research gaps will be filled over time rather than delay the implementation of this policy. BCC's view is that the NE model would only work for urban areas with high-density gulls colonies when and because the Local Authorities in the impacted areas may avail of 'class' licences to provide managed services to control urban gulls.

⁴ It is important to note that as the Natural England Gull policy was published on 30th January 2020 and is of yet untested, all views of CC members of the approach taken by Natural England is assessed at face value and not of first-hand experience.

NPWS view many aspects of the policy as being potentially beneficial in an Irish context, but express caution that any such proposal should be compliant with national and EU law and that adopting a similar framework would have considerable resource implications for NPWS.

FCC is of the view that many aspects do not conform to the Birds Directive requirements in the absence of any hard data on the Gull breeding numbers in Ireland. Furthermore, they are of the view that the issuing of licences for control measures appears to make little sense in the absence of a defined health risk and details on the effectiveness of control measures. By example they cite that various local authorities in the Netherlands have indicated that the proposed control measures have had very little impact on the overall levels of problems caused by Gulls in towns as it seems that the problem gets moved on.

Table 1. Timeline of iterations of Consultative interim report in relation to CC meetings.

Item	Date	Detail
CC1	14th June 2019	
CC2	23rd October 2019	
Draft report V1	17th November 2019	CC request revision to include outcome of CC3
CC3	25th November, 2019	
Draft report V2	20th January 2020	CC3 output included. High-level recommendations included. CC comments received and report revised.
CC4	4th February, 2020	
Draft report V3	5th February 2020	CC reviewed and comments issued for further amendments
Draft report V4	28th February 2020	Recommendations removed from report due to divergence of views on recommendations.
Proposal for amended recommendations from Chair	11th March	CC to consider NE recommendations for Urban Gull licencing regime
Deadline for receipt of views on NE approach	31th March	As per request to CC
Revision and completion of interim report (V5) for circulation to CC	7 th April	Detail of proposed licensing framework removed and replaced with more general recommendation

A framework for licensing similar to the NE approach was suggested by the chair and circulated to the CC, but was not accepted by BWI or FCC for reasons including that they are of the view that it does not comply with EU Birds Directive. BCC did not accept this recommendation for the converse reason that it did not adopt all of the principles of the NE approach. The details of the proposed licensing framework have since been removed and replaced with more general recommendation in 7.5.1.

7 Recommendations

The recommendations presented expand on suggestions and topics for action given in Appendix 1 and items raised in the CC meetings to date.

7.1 Workings of the committee:

- 7.1.1 An initial draft of the minutes of meetings of the CC should be circulated within 15 working days of the meeting. A reasonable deadline for receipt of committee members' comments should be set.
- 7.1.2 Where issues arise regarding future agreement of minutes, the chair will attempt to secure consensus amongst all parties. Where this is not possible, he should make balanced decision on the final draft, following comments from relevant parties. In this case, a note of 1-2 sentences should be provided documenting the dissent of the relevant party(ies).
- 7.1.3 Following the completion of this interim report, the Terms of Reference this committee should be broadened its scope to incorporate a steering role to implement the recommendations of this report.

7.2 Public health and safety:

- 7.2.1 The level of risk, including emerging risks, urban gulls pose to the general public, in particular communities being impacted by high density urban gull colonies, and relative to other wildlife in Ireland, should be assessed by an appropriate expert (individual/group). This should comprise a full desk review by an independent (possibly academic) body. In the case that urban gulls are considered a health risk, any such study should attempt to determine the point at which gulls may pose this risk. This review should form the basis for any potential decisions relating to the management of gull populations and review the operational practices in other countries.
- 7.2.2 The public health and safety implications of sleep deprivation in humans as a result of noise (including intensity and duration) from gulls, in the context of wildlife in general, should be assessed by an appropriate expert.
- 7.2.3 The CC do not have any member with expertise in public health and this should be filled either by expert guest speakers or, ideally, by representation of a suitably qualified public health expert.
- 7.2.4 The Department of Culture, Heritage and the Gaeltacht should ensure appropriate input on public health is provided by an appropriate expert on wildlife matters pertaining to public health, particularly in communities with relatively high densities of gulls.
- 7.2.5 Consideration should be given to the inclusion of a state advocate on the CC that would act on the part of citizens that are impacted by urban gulls.

7.3 Control of gulls

- 7.3.1 The movement patterns and social dynamics of gull populations are complex. Efficacy of any prevention measures for nesting gulls at a given site appears to relate to the regularity of the removal of nests and this should be considered by the licensing authority prior to removal of nests, *i.e.* gulls will continue nesting attempts unless nest removal is carried out on a daily basis.

7.4 Communications, participatory approach and public education

- 7.4.1 Urban gull expert, Mr Rock, advised engagement of the general public through education in the ecology of gulls and the complexity of the issues in tandem with research on their local ecology including movement patterns (see ecology recommendations). This should be considered as part of any gull management plan.
- 7.4.2 A communications/public engagement framework for how a participatory approach could be implemented should be developed, including dissemination tools (possibly including web-site) for the general public and for accurate reporting for media.
- 7.4.3 Communications events and briefing materials should be developed by NPWS and relevant Local Authorities for politicians (government, national, local) to ensure proper dissemination, and press briefings.

7.5 Legislative and policy requirements regarding urban gulls

- 7.5.1 A policy framework should be developed by DCHG for urban gulls in consultation with the Gull CC and legal advice. This should be fully compliant with national and EU law and follow a review of licensing systems in EU countries that are compliant with EU law.
- 7.5.2 An expert on the legal obligations surrounding Article 9 of the Birds Directive and relevant jurisprudence should join the committee to ensure all potential recommendations are within the law.
- 7.5.3 The threshold for what is “in the interests of public health and safety” in terms of Article 9 of the EU Birds Directive and the Irish Wildlife Act, in the context of urban gulls should be assessed by a relevant legal expert. This should also consider the approach in other similar EU member states.
- 7.5.4 Policy regarding urban gulls should be reviewed by a relevant expert (possibly within NPWS) to fully align with the findings and outcomes of other recommendations contained in this report. This should be a review to ensure full alignment between government departments, and with EU policy and law.
- 7.5.5 The roles of all relevant public authorities in relation to urban gulls should be clarified by DCHG on a collaborative basis. This process should clearly delineate roles and clarify responsibility on resource issues appropriate to the respective Department/Public body.

7.6 Urban Gull ecology

- 7.6.1 Data should be gathered by NPWS to provide estimates of the population level.
- 7.6.2 Colour-ringing of gulls in urban areas should be promoted by NPWS, along with specific tracking studies to assess the movement patterns of target populations of urban gulls.
- 7.6.3 Further information on the behaviour of gulls in these sample areas should be gathered by NPWS.

7.7 Impact of gulls on urban dwellers

- 7.7.1 The experience of (a representative sample of) the general public, schools and other education facilities, businesses and healthcare facilities should be measured as part of an integrated programme that, depending on scope, may encompass quantitative

and qualitative data such as surveys and the inclusion of focus groups with participants that are particularly affected by urban gulls (Local Authority & academic institute). This should be an objective and scientific-based study and should primarily focus on areas with relatively high densities of gulls.

7.8 Other recommendations and timelines

- 7.8.1 The recommendations outlined above should be considered by DCHG and the NPWS, ranked in order of priority and given a suggested timeframe.
- 7.8.2 Resources for how these recommendations can be achieved should be carefully considered. Where limited resources hinder the progress on realising the recommendations presented above, this should be clearly expressed to the CC.
- 7.8.3 In terms of enacting these recommendations, the CC recommends the potential to trial several of the recommendations contained herein during the 2020 breeding season, for example through a school-based programme. If, due to the COVID-19 restrictions, this is not possible, this should be deferred to 2021.

8 Recommendation towards 2020/21 Derogation

Recommendations for the 2020/21 Derogation have been made by both BCC and BWI to DCHG independent of this report. Any decisions pertaining to the 2020/21 Derogation should be made to protect the interests of public health and safety in keeping with national and EU law. The limited period of time available between the completion of this report and the annual Declaration should be noted, in addition to the COVID-19 emergency. On account of this exceptional year, consideration should be given to facilitate those in selected pilot target areas, where legitimate needs arise, to avail of a licence.

9 Conclusion and next steps

Urban Gulls have a complex ecology and issues arising in urban areas require broad-ranging and multifaceted solutions. Through the discussions of the CC, a number of gaps in knowledge are apparent. Many of these gaps were identified in a workshop in CC3, and can be categorized under four broad themes including gull ecology, control of urban gulls, communications and public health. Within each of these themes a range of research topics, gaps in knowledge, and suggested solutions are presented. Recent policy developments in England can also inform potential solutions for developing an context-appropriate gull management strategy for Ireland. These outputs can provide a strong foundation for producing recommendations for urban gull management. The recommendations contained in this document provide a starting point for agreeing a coherent and appropriate long-term framework to manage gull species in Ireland. The CC will continue to work toward this objective.

Appendix 1. Output of workshop at CC3 to identify gaps and / or solutions relating to urban gulls

Suggested by	Urban Gull Ecology		Control of Urban Gull		Communications		Public Health	
	Gaps	Solutions	Gaps	Solutions	Gaps	Solutions	Gaps	Solutions
FCC	Baseline data on Herring Gull at national level (publish data)	Monitor response to control measures and movement patterns	Efficacy of control measures	Identify the target of any gull programme	Quantitative and qualitative evidence of public opinion on urban gulls	Undertake public opinion poll	Providing evidence of the risk of AMR	Invite an expert to present on AMR risk
FCC			Resources		Resources	Ask Peter Rock to do a presentation in Fingal		Produce paper on AMR
BWI	What is the effectiveness of solutions		Quantify problems / conditions of risk	Alignment with EU law	Quantify impact of urban gulls on the public	Science-based public awareness campaigns	Scientific evidence as to risk	
BWI	Align data requirements with any proposed solutions		Reporting of numbers of species killed		Data on public opinion on attitudes and opinions		Condition of risk	
BWI	Conservation plan for the species		Effectiveness of solutions					
BWI	National gull population survey							
DCHG		Full survey of gull population in north Dublin	Efficacy of managed services		Reconciling risk/problem versus response	Public education (by local authorities)	Robust scientific evidence of impact on human population	Bring health expert onto the CC
DCHG		Survey of gull movement patterns	Quantify problems with urban gulls					
DCHG		National urban gull survey	Case-law relating to Art. 9					

	Urban Gull Ecology		Control of Urban Gull		Communications		Public Health	
Suggested by	Gaps	Solutions	Gaps	Solutions	Gaps	Solutions	Gaps	Solutions
BCC	Survey number of nesting gulls	Deter high-density colonies of urban gulls	Robust policy	Policy leadership from DCHG		Public engagement campaign	Common EU-wide policy	Alignment with EU policy
BCC			Inadequate licencing system and operational services	Alignment with EU law (including operational policy)		Briefing local authorities	Evidence as to risk regarding AMR	Citizen-focused approach
BCC			Citizen-focused approach	Fast-track licencing system		Introduce issue reporting system, gull ate my food, etc.	Clear policy at national level	
BCC				Introduce 'Class-licencing' system		Briefing politicians on issues		
BCC				Managed services through the Local Authority		Level and type of impact on human population		
BCC				Introduce systematic approach to deter gull from areas of high density living				

Suggested by	Urban Gull Ecology		Control of Urban Gull		Communications		Public Health	
	Gaps	Solutions	Gaps	Solutions	Gaps	Solutions	Gaps	Solutions
Chair		Urban gull population census	Efficacy of nest removal or other measures			Design framework for pilot public engagement programme, including schools	Identify and quantify risk posed by gulls (with reference to other wildlife)	Desktop review by independent health expert
Chair		Assessment of movement patterns of gulls	How would proposed control measures/solutions fit with the law?			Survey of opinions on gulls in urban areas	Level at which sleep deprivation is a public health issue	Health expert should join CC
Chair		Study on behaviour of sample population						DCHG follow expert advice re decision on public health and safety

FCC: Fingal County Council

BWI: BirdWatch Ireland

DCHG: Department of Culture, Heritage and the Gaeltacht

BCC: Balbriggan Community Committee

Via email 7th January 2021 - from the Balbriggan Community Committee (BCC) on urban seagulls

To: Niall Feery & John Fitzgerald,
NPWS, Dept. Housing, Local Govt. and Heritage.

Ref: <https://www.npws.ie/news/control-certain-wild-bird-species> and
<https://www.gov.ie/en/press-release/657c5-npws-seeks-comments-and-proposals-from-the-public-on-the-control-of-wild-bird-species-derogations/>

7th January, 2021

Dear Mr Feery, Mr Fitzgerald,

This letter is in reply to your email to us dated 30 Dec. last and needs to be read in conjunction with our emails to you dated 21 and 22 Dec last and the above links to the Dept./NPWS recent Public Consultation process (PCP) notices regarding the Wild Birds Derogations process. We brought to your attention that the original “NPWS notice” on your website dated 16th December was wrongly confined to “landowners and their agents” to the obvious exclusion of all other interest groups including communities, schools, businesses healthcare institutions etc.. We note that your Press Release two weeks later on gov.ie dated 30th December (14 days after the first notice) invites “comments and proposals from the public”. While we did not expect our corrections to be acknowledged by the Dept./NPWS, as a matter of courtesy we would have expected a ‘heads up’.

We now have two separate (materially different) though linked notices on the same matter though addressed to two distinct constituencies. Most surprisingly, the traditional constituency (notice of 16th December) has fourteen days longer to submit proposals than the “new” constituency (30th December). Allowing for the Christmas and New year holidays, the latter notice therefore is further foreshortened. This is unfair and unreasonable, further so when one considers that this is the first time such a notice was ever issued to the public, and the fact that it hasn’t been advertised in main stream media – as previously raised with you.

We consider it necessary once again to state why we continue to feel obliged to remind the Dept./NPWS of the fact that it is almost five years since we first sought basic protections from high density urban seagull colonies such as have been continued to be routinely provided for very many years in all neighbouring jurisdictions under EU law. It is solely the Dept./NPWS (not the Dept. of Health, not the HSE, and not the Dept. of Local Government or any other public body) that has the statutory authority and the responsibility for the provision of such legal protections for citizens. It is the Dept./NPWS that has continued to deny such legal protections to Irish citizens, in the urban seagull context, since 2016, and indeed earlier when one considers the Dept./NPWS Press Release on uncontrolled proliferation of urban seagull colonies that you issued in July 2015.

We set out below a detailed dismantling of the two notices (16th and 30th Dec.) in terms of not being fit for purpose, legal validity, up-to-date evidence-based policy, and the Dept.’s/NPWS failure and/or refusal to have regard to important and relevant expert opinions at its disposal since February, April and August 2020 – and indeed much further back in time than that.

At the outset, the EU Birds Directive and the Habitats Directive, Irish primary and secondary legislation, and the impugned and legally extinguished 1986 Regulations all specify both public health and public safety as legal criteria governing the decision process. Both of your PCP notices have omitted the “public safety” criterion. This is an extraordinary gaffe by the NPWS, which we are bringing to your attention.

How can the process have integrity when the key legal and policy criterion that is State-wide 'public safety' has been excluded from the PCP process, yet is a mandatory component of the decision-making process for Derogations – as evidenced by every Declaration published since 1986, and of the governing legislation for actual Derogations and Licences? This is a fatal flaw in the PCP and is grossly misleading to members of the public and/or organisations and institutions who may consider making proposals.

In support of our overall position, we point out that, a) acknowledged expert advice (P. Rock, UK) on urban seagull colonies and negative impacts on communities was provided to the Dept./NPWS in CC meetings in February 2020, b) expert medical advice on zoonosis and on Antimicrobial Resistance (AMR) and the evidence-based implication of urban seagull colonies in AMR dispersal was provided by BCC in 2017 to the Dept./NPWS, then again in February 2020 and again in April 2020 – respectively by Associate Professor McMahon of DCU and Professor Morris of NUIG and the EPA AREST project, and that c) expert legal advice (hired by the Dept./NPWS) was provided to the Dept./NPWS in August 2020 which stated that the decision threshold (as to whether or not to Derogate to protect Irish citizens from negative impacts of wild birds) that has been applied by the Dept./NPWS since 1986 is **“materially higher”** than the specified legal threshold (for this decision) in the Birds Directive; indeed the legal advice also confirmed that the AMR issue and the evidence therefor, and the noise issue from urban seagull colonies provide grounds for Derogation for reasons of both public health **and** public safety, and that neither the Birds Directive nor the 2011 Regulations have been properly implemented by the Dept./NPWS.

We also remind you that BCC has pointed out since 2016 the material difference between the decision threshold being applied in Derogations by the Dept./NPWS since 1986 viz. **“represent a threat to public health and safety”** and the legal threshold in the Directive viz **“in the interests of public health and safety”**; and we remind you that all five of our TDs wrote to former Minister Madigan in October 2018 before their meeting with her from which the Consultative Committee (CC) on urban seagulls emanated, and they also pointed out the serious legal anomaly regarding the decision threshold. **We are awaiting replies to important material that we submitted on 2/3 November last to the CC’s legal module (by written arrangement and agreement with the ex-Chair) and to several questions on legal matters submitted to the Dept./NPWS since 9th Dec. last -. We require these replies to inform our submission to the PCP.**

We also provided you with verifiable evidential material on AMR from Associate Professor McMahon – including his 2015 Howth Study of urban seagulls that was licenced by the Dept./NPWS; in relation to which Study your former colleague now retired (Mr Leckey) assigned to the urban seagull issue stated “our only role was to issue the licence” – even though the Howth Report provided to the Dept./NPWS contains a crystal clear warning on the public health AMR issue. We also researched and provided you with Professor Morris’ AREST Project (EPA funded) details and excerpts from her RTE Documentary on AMR which she repeated in her April 2020 presentation to the CC in which when we expressed our concerns about schools having high density colonies breeding on their premises she replied (see draft minutes) that **“an abundance of caution is necessary when dealing with high density urban seagull colonies”**. In addition, we provided you with the Dutch Supreme Court ruling in August 2016 that authorised controls on urban seagulls on public health and safety grounds, and we researched and provided you with the new English policy (2020) on urban seagulls which affirms overriding priority to public health and safety, and which sets no limit on urban seagull controls, and highlights the fact that urban seagull colonies do not revert to rural/seaward living – a fact also confirmed to the CC last February by Mr Rock. **That is to say that there is no conservation merit in proliferating urban seagull colonies as a notional means of re-stocking rural/seaward colonies – the logic being that if urban colonies are to be accommodated per se, then they must be managed to respect the rightful priorities due to human beings in our core habitat areas such as our homes, schools, businesses and hospitals and where we store and consume our food.** In

addition to the public health and safety issues, the Dept./NPWS has been aware for many years of the very high cost of damage being caused by urban seagull colonies.

We have compared the text of the PCP Notice 14 Dec. with the historic 'closed' Stakeholders notice that we received in December 2019 and they are identical. We have noted that the Dept./NPWS has published the PCP Notice on its website, we presume also in Iris Oifigiúl, and we have seen it linked on the BETA gov.ie site at . <https://www.gov.ie/en/press-release/657c5-npws-seeks-comments-and-proposals-from-the-public-on-the-control-of-wild-bird-species-derogations/> .

Taking the above evidence-based material in the round therefore, just one over-arching point of serious concern that we have is the fact that the PCP notices on 16th Dec./30th Dec. last evidently do not take any of the above material in relation to the urban seagull issue into account in either its wording or in its provisions. Indeed the wording of the notice on 16th Dec. clearly suggests that the matter only relates to landowners and their agents – and the notice on the 30th Dec. although it is addressed to the 'public', brings the reader back to the 16th Dec. notice which clearly suggests it is intended only for "landowners and their agents" and makes no reference to submission of "proposals".

In our view, as expressed in our CC Minority Report recommendations last April, the urban seagull issue warrants national advertising in mainstream media and a direct communication with the Dept. of Education in relation to schools – as was indeed recommended by CC meeting 4 **last April**, including direct contact with the National Parents' Council, as also recommended – see draft minutes for the CC 4 meeting. Given those recommendations last April – we are very concerned that nothing of them, indeed absolutely nothing of the CC work since June 2019, is reflected in the current PCP. Former Minister Madigan told our five TDs on 18th October 2018, when setting up the CC, that it would "meet soon and make recommendations for the 2019 Derogation Declaration". This did not happen – the CC met in June 2019 – too late for the 2019 Declaration. The CC, however, did make recommendations last April – for the 2020 Derogations Declaration which the Dept./NPWS ignored completely. Now in the PCP for the 2021.22 Derogation Declaration, the Dept./NPWS continues to ignore the CC recommendations made last April.

Will the Dept./NPWS please set out what is the point of the "CC to examine negative impacts of urban seagull communities and make recommendations", that originated from the major Review of Derogations in 2018, i.e. the Review that was cited to BCC in September 2016 as the solution to all perceived threats – when the Dept./NPWS has chosen to ignore the CC's recommendations for the 2020 Derogation Declarations and based on the PCP, and clearly seems set to ignore them again for the 2021.22 Derogation Declaration. And will the Dept./NPWS now also explain and justify its obvious, sustained disregard for the health and safety of Irish citizens negatively impacted by high density urban seagull colonies, and the huge damage cost from such colonies?

We are now reverting specifically to your email reply to us of 30 Dec. copied in below:

Our experience of the 2019 PCP last year was that our invited submission made in good faith before the deadline of 10th January 2020 was not acknowledged by the Dept./NPWS until after we complained of that fact in February; legitimate questions that we asked regarding the Consultation and Derogation processes were neither acknowledged nor answered by the Dept./NPWS – i.e. there was zero transparency from the Dept./NPWS; and ultimately the 2020.21 Derogations Declaration did not in any way reflect our submission, nor did we receive any feedback from the Dept./NPWS. In fact a PQ asked by one of our TDs received only a curt partial reply that the CC's Interim report had been received and was being considered. It is now January 2021 and there has been no discernible response of any kind to the CC Interim Reports and recommendations, and there is no evidence in

the PCP of any intended actions on the urban seagull issue in the 2021.22 Derogation Declaration, on the contrary the character of PCP strongly suggests the Dept./NPWS intends to do nothing on urban seagulls for another year at least. This indicates to us that the Dept./NPWS intends once again to run down the clock on the 2021 Declaration and defer action for a sixth year and a seventh breeding season – continuing its disregard for Irish citizens.

Now in relation to the text of your email (your text following in ***black italics***), please see our responses in **bold blue and red text**:

Good evening, Mr Cardiff.

I wish to acknowledge receipt of your recent correspondence on the above matter, received in the Wildlife Licencing Unit on 21 and 22 December.

BCC Comment: We regard our correspondence 2/3 Nov. to the Barrister for the CC legal module – copied to the Dept./NPWS as relevant to the above matter, and also the email sequence that we commenced on 9th December (three emails) to 16th December.

I have examined the position and made enquiries and I wish to advise as follows on behalf of the Department

The consultation process is merely that, a process designed to elicit views of interested persons. The consultation process does not represent any decision and it is not based on any 1986 regulation.

BCC Comment: BCC has never considered or inferred that the PCP itself represented any decision, or that it was based on any 1986 Regulation and we are obliged to construe this apparent ‘clarification’ by the Dept./NPWS as disingenuous. We have also noticed a different form of wording in the Public Notice press release made to gov.ie (compared to the NPWS Website notice) where NPWS is seeking “comments and proposals from the public”, however the link returns the reader to the NPWS posting which strongly indicates that it is primarily concerned with landowners and their agents.

To be perfectly clear, BCC’s understanding of the PCP is as follows:

- i.) Until December 2019, the PCP was carried out as a ‘closed’ process involving a historic list of ‘stakeholders’ that included landowners, agents, farming organisations, Airport authorities state-wide, and wildlife conservation groups**
- ii.) In December 2019 BCC was formally invited by the Dept./NPWS to make a submission to the PCP, which we did ahead of its 10th January deadline; as far as we are aware, BCC is the only organised community group other than listed in 1) above to have made a submission to the PCP, and the only community group to have ever made a submission in relation to urban seagull colonies in the CC context**
- iii.) The PCP is the main channel through which to advise the Dept./NPWS of the operation of Derogations through a given yearly cycle; BCC advised the Dept./NPWS each year since the 2017 Balbriggan Derogation that a) in our view 1st May publication date for the Derogation was far too late for the seagull breeding season, resulting in a scramble to remove nests, people, including elderly and schools and businesses, being left to their own devices at great risk of injury, and an ineffective communication across the Derogation zone b) there was a serious lack of transparency because people, businesses, schools et al would not be familiar with the NPWS website or the Derogation process – and this also resulted in contractors being unaware of the Derogation, c) that publication of the Derogation was needed much earlier e.g. in February and advertising needed to**

include mainstream media – print, on-line and broadcast channels. BCC repeated this advice/feedback in our first invited submission to the PCP in January 2020. BCC has no evidence of our submission ever having been considered, we requested rationale from NPWS a number of times but did not receive any acknowledgement or response, and indeed none of our evidence-based proposals or recommendations in the above regards have ever been implemented to any degree. Likewise the recommendations in the CC First Interim Report (FIR) and Minority Report (MR) submitted to the Dept./NPWS last April have never been acknowledged, those recommendations relevant to the 2020 Derogation Declaration were not implemented – with no explanation or feedback to the CC from the Dept./NPWS, and clearly the 2021.22 PCP text/process has not been influenced in any way by the work and recommendations of the CC up to and including the FIR/MR last April, the huge volume of evidence of negative impacts of urban seagull issues, or indeed the clear indications from the CC Legal module last July/August that the Dept./NPWS has been using an illegal decision threshold “represent a threat...” since 1986 for the Derogation decisions on whether or not to protect citizens – compared to the Directive threshold “in the interests of public health and safety”.

- iv.) **The PCP is also the main channel through which to seek to influence the Dept./NPWS regarding the actual Derogation decision process and the Derogation decision outcomes as to which species are included or not, which measures may be licenced, which time constraints may apply, and most importantly in our view – what valid legal grounds may be accepted and applied for any given Derogation, and what legal threshold will be applied to the decision yes or no to protect citizens in any given species/scenario.**

In our view, and based on extensive evidence provided over several years, and on legal advice acquired by the Dept./NPWS last August, and based on demonstrated legal policy and operational precedents in every jurisdiction in Northern Europe except Ireland, the Dept./NPWS has failed and continues to fail to protect both the public health and public safety of Irish citizens.

Furthermore in our view, the PCP as currently constituted, and in particular the Dept./NPWS email to us on 29th December seems to be on course to continue with a business as usual approach up to the 1st May 2021 – in complete denial and attempted diminution of all of the evidence back to 2016 on urban seagull issues, and in denial of the legal failings of the Dept./NPWS vis a vis the 1986 Regulations and the Birds and Habitats Directive, and irrespective of the work and recommendations of the CC since June 2019.

Points I)-IV) above set out BCC’s understanding of the PCP and its purposes, and our views on the implications of pertinent failures by the Dept./NPWS in relation to the urban seagull issue. Specifically in relation to the legal matters, we are still awaiting replies to follow-up material submitted (as agreed in writing with the ex-Chair of the CC) to the Barrister over two months ago – and we require such replies to further inform our submission to the PCP should it proceed. We note that the Barrister replied to the first phase material within three weeks of it being sent to him.

Clearly, no Declaration in respect of 2021/2022 has been made at this time, nor has a determination been made as to which species will be in that declaration, nor the reasons for the inclusion of such species, nor the time periods for which they will apply; nor has the legislative basis for any such derogation which may be made been determined/published at this stage.

BCC comment: *A series of PQ responses to TD – now Minister - Darragh O'Brien in November 2016 (attached to recent correspondence with the Dept./NPWS) indicated that the process for deciding on Derogations was entirely in house, without reference to other Departments, Agencies or expertise. As far as we are aware, the Dept./NPWS decided (for the first time since 1986) to consult the HSE in December 2016 in relation to the urban seagull issue – and used selected parts of the HSE response to justify refusing a public health and safety Derogation for urban seagull colonies on the grounds that urban seagulls do not pose a general public health risk of contagious disease to the population, while ignoring two Public Health Doctors in the same HSE correspondence who referred to the wider definition of public health and the potential role of Local Authorities – i.e. the exact policy and operational position deployed in all of our neighbouring jurisdictions, “for years “ (Mr Leckey, meeting 8th Dec. 2016, NPWS Offices” - for urban seagull issues.*

In response to further PQs, the Dept./NPWS provided copies of Derogation Declarations back to 2009 (stating that earlier years were in archives and would take months to retrieve); it was perfectly clear from those back years that the Derogation process and Declarations were virtually static and unchanged from year to year. The Balbriggan Derogation in 2017 was the first substantive, significant change to the Declarations in very many years. This change was not achieved through the PCP – BCC was not invited by the Dept./NPWS to join the PCP as a ‘stakeholder’ until December 2019 – and then our submission was completely ignored in the 2020 Declaration, as was our Minority CC Report submitted in April. The Balbriggan derogation was achieved at the behest of the then Minister Heather Humphreys, after extensive, cross-party evidence-based representations by all five TDs for Balbriggan, by all five Councillors for Balbriggan and by our MEP. The actual Balbriggan Derogation continues to deny the ‘public health’ element of the issue, continues to be issued at the last very late and with zero transparency. Indeed it was posted incorrectly twice in May 2020, and only corrected on 21st May – three weeks late – with no transparency from the |dept./NPWS

The consultation process itself is not bound by any legal process.

BCC comments: *Considering the context of the PCP – i.e. it is offered by the Dept./NPWS as a means to influence decisions (that are in fact bound by law) about whether or not to provide State-wide protections to public health and safety and air safety of citizens. Such decisions are of the greatest importance within the duty and responsibilities of the State and its administration.*

Therefore, the PCP either is or is not a substantive, purposeful, meaningful and influential process designed to contribute towards very important decisions. Which is it? If it is a substantive, purposeful, meaningful influential process – then it does not and should not need to be bound by legislation, unless there may be doubts about its integrity and/or weaknesses in the Dept./NPWS performance of the process. Protection of citizens should be self-motivational for any Govt. Dept.

Further, in relation to the importance of the process within its contextual setting, in our view, it must derive its implicit and integral legitimacy from at least two if not more over-arching legal drivers viz a) the primacy of Constitutional legal protections of Irish citizens and the States unqualified duty to provide such protections, and b) the correct application of the pertinent Law, in this case the EU Birds Directive, governing the Statutory Instruments and the resulting Licence(s) that are produced from the decisions which the Dept./NPWS is seeking to inform from the information yielded by the PCP. If any of the above ingredients are absent or defective, the PCP is flawed and not fit for purpose – with a consequence that the decision(s) whether or not protection of citizens is necessary are also flawed – because they have not been fully and effectively informed. In our view, the PCP for the 2021.22 Derogation Declaration process is seriously defective and we now wish to know and understand why this is the case.

If we make a practical example of the urban seagull case:

- a) *The Dept./NPWS has been aware – with ample evidence - of serious issues with urban seagulls for several years, such issues including an escalation of attacks and serious injury to people in both breeding and foraging contexts, extensive and costly damage to businesses, homes and schools, and*

- serious concerns about faecal contamination on an around human living and recreational spaces, with an extensive and verified evidence base for the AMR risk – yet the Dept. has not acted*
- b) The known, evidence-based issues represent both public health and public safety risks to very large numbers of people in the urban settings, including in schools – refer to the filmed evidence in the 2018 Roughan O'Donovan Survey in 2018*
 - c) The circumstances with urban seagulls here in Ireland are identical in character and intensity to circumstances in every neighbouring jurisdiction in Northern Europe, and governed by the same legislation since 1979 – notwithstanding Brexit in the case of the UK*
 - d) Unlike every neighbouring jurisdiction, with the exception of a partial derogation in Balbriggan at the behest to the then Minister, i.e. not proactively granted by the Dept./NPWS – Ireland remains uniquely alone in not providing protection for its citizens in urban areas impacted by high density seagull colonies that have proliferated since closure of landfills.*
 - e) All of the above was submitted, including substantial evidence in and since 2016, again via the PCP in January 2019. Our PCP submission in 2019 was either completely ignored or totally discounted by the Dept./NPWS in its decision process towards the 2021 Derogation Declarations; if the latter was the case that would contradict the logic of setting up the CC. The CC recommendations in April 2020 were also ignored by the Dept./NPWS – without any feedback, comments or explanations and without the reports even being published.*
 - f) There are huge amounts of documented evidence that support the above factual summary and this has been the position since 2016, and earlier.*
 - g) To date – Irish citizens remain unprotected by Dept./NPWS decision and policy position. And the Dept./NPWS handling of the urban seagull issue clearly indicates that citizens continue to receive either no consideration and/or no priority in its Derogation Declaration deliberations.*

BCC Commenting further on this part of your reply to us on 29th December:

Clearly, no Declaration in respect of 2021/2022 has been made at this time, nor has a determination been made as to which species will be in that declaration, nor the reasons for the inclusion of such species, nor the time periods for which they will apply; nor has the legislative basis for any such derogation which may be made been determined/published at this stage.

BCC comments: We state again that whereas the determinations of operational parameters that may include species, reasons for controls, permitted or excluded control measures and (optionally) periods of operation of the licence may and indeed must of course be variable as attuned to need and proportionality, there is one core legal element which is not and must not be either variable or compromised – because it is legally defined in the Birds Directive. That core legal element is the decision threshold that must be met in order to include or, if not met, exclude a species from being subject to controls. And that legal decision threshold as specified in the Directive and in the as yet unimplemented 2011 Regulations, is that any controls licenced must be “in the interests of public health and safety”.

It is self-evident and verified in the legal opinion given to the Dept. and the CC last August that the threshold used by the Dept./NPWS since 1986 (The 1986 Regulations), viz. “represent a threat to public health and safety” is materially higher than the legal threshold in the Directive. The Dept./NPWS will be aware that we have been making this point since 2016, that it was made to former Minister Madigan in writing in October 2018 by all five of our TDs before she established the CC, that we made this point again to the 2018 Review and to the CC – repeatedly in our meetings since July 2019; and we made it again in our submission to the PCP in January 2020. In all of the above instances, the Dept./NPWS ignored the serious (threshold) anomaly and persisted with the 1986 threshold in the 2020 Derogation declarations. It now remains to be seen (though we do not intend to once again wait and see for a sixth year) as to whether or not the Dept./NPWS intends to continue to ignore this serious legal anomaly in the 2021.22 Derogation Declaration, thereby also ignoring the legal advice it received last August regarding the threshold. And as we have already flagged to the Dept./NPWS as this is a legal matter of utmost importance, we have raised it with the Minister and are anticipating his response.

Therefore, we repeat our question once more, the answer to which will materially inform our submission to the PCP before the 20th January closing date – will the Dept./NPWS please tell us clearly will you be using the Directive’s threshold “in the interests of public health and safety” – i.e. will you be complying with the law

when making the decision(s) in respect of the pertinent urban seagull species as to whether or not they will be included in the Derogation Declaration “in the interests of public health and safety”? Or do you intend to persist with the legally extinguished 1986 threshold? This is not a variable – the law is the law, and the Dept./NPWS is either going to apply the law or it is going to persist with the legally extinguished threshold. We require and are entitled to know the answer to this question.

As we have argued in our material since 2/3rd November and previously, and as borne out by the legal opinion, the Derogation Declarations made since 1986 - have not used the Directive’s threshold, have used a materially higher threshold, and Irish citizens continue to be denied protections by NPWS policy and decisions.

It is intended to get the views of those who may be interested in the process.

BCC comment: The Public Notice which we have discovered ourselves was added to the Gov.ie website as a press release on 30th December – 14 days after the original posting on the NPWS website (with no extension of the closing date) – states that NPWS is inviting comments and proposals from the Public.

It is open to anybody to make comments or observations on this process whether that be from individuals, any local community groups, public bodies, non-governmental organisations or anybody else.

BCC comment: Your explanation to us above on 29th does not mention “proposals”. Whereas the gov.ie press release clearly does invite comments and proposals from the public, when one clicks the link to the NPWS web-posting this still gives the impression that the notice really just relates to landowners and their agents, with no reference to “proposals”. This is a cause of much confusion and we therefore advise you with very high confidence that unless this PCP is advertised in mainstream media (print, on-line and broadcast) per our comments to you on 14th-17th and 21/22 December – it will not be seen or understood by the “public”, by residents, schools and businesses impacted by the urban seagull problems, indeed it will not be in any way indicative to the general public that the PCP would accommodate input of “comments and proposals” on the urban seagull problem. We are also quite confident that this reality must be appreciated and understood by the Dept./NPWS – and we therefore question the fitness-for-purpose of the PCP in the absence of substantial advertising in the mainstream media that includes a clear indication that the urban seagull issue is accommodated within this PCP.

Certainly, your views on derogation in respect of 2021/2022 will of course be welcome. It may be that material along the lines outlined by you in relation to the legal basis for the making any derogation will form part of any views you wish to submit should you indeed wish to submit views and these views will be taken into account when the position in respect of 2021/22 is being examined.

BCC comment: Notwithstanding our very disappointing experience of the Dept./NPWS since 2016, and from the 2020.21 PCP, and our many concerns as expressed above and in our correspondence since 2/3 Nov – it is currently our intention to make a submission to the PCP by its closing date.

In the meantime, the Department continues with the consultation process in good faith.

BCC comment: Given our experience of the Dept./NPWS since 2016, this ‘good faith’ claim is something we will assess for ourselves based on the Dept./NPWS response to the issues we have raised herein – in particular our request for clarity and certainty as to the legal threshold in Article 9.1.a) of the Directive and whether or not the Dept. intends to use this threshold, or to continue with the 1986 threshold which was legally prohibited by the 1979 Birds Directive before it was arbitrarily devised in 1986 (we have requested to papers on the 1986 threshold preparation for the CC legal module), and then subsequently legally extinguished by both the Wildlife Act 2000 (Section 59) and the 2011 Regulations that have still not been implemented – refer to legal advice August 2020.

All views received will be fully considered and taken into account.

BCC comment: *Notwithstanding our experience in 2020.21, we will seek feedback and explanations for final decisions in the 2021.22 Declaration, the Dept./NPWS' response to which will further inform our assessment of good faith or otherwise on its behalf in the PCP and in the Derogation Declaration process itself.*

Based on all of the above, there are a number of compelling reasons to scrap the current process and replace it with considered and consistent notices that describe correctly the legal threshold that will be applied to requests and proposals for derogations, and are therefore fit for purpose. Similarly, the PCP should make it clear that urban seagull colonies are catered for in the process, and that people, schools, businesses, hospitals et al. can request a Derogation or a Licence. In the Balbriggan case in 2017 the Dept./NPWS accepted that the volume of issues could not be administered by a case-by-case licencing system, and also that there are no alternative solutions for nest and egg removal. Ubiquitous evidence from all neighbouring jurisdictions has also demonstrated these facts. By continuing to delay solutions, the Dept./NPWS is making matters worse with every breeding season that passes by. In our view there is adequate time to revise the PCP to make it fit for purpose, and any decision by the Dept./NPWS not to do so must be challenged and examined at the highest levels of authority.

In addition to the above, we inform you here that our community committee has now reached a tipping point with the Dept./NPWS and we are now seeking an independent and focussed examination of specific and historic actions/inactions by the Dept./NPWS to incorporate:

- 1 this current PCP**
- 2 the decision process following this PCP and up to and including the making of the Declaration – to include transparency regarding the full evidence basis for decisions on whether to derogate or not for species – in particular for decisions affecting large urban communities**
- 3 the non-compliance to date of the Dept./NPWS with the EU Birds Directive's legal decision threshold**
- 4 the Wildlife 2000 Act, specifically Section 59 and the threshold it specifies and its clear prioritisation of public health and safety**
- 5 the need to discontinue the legally extinguished 45 year old threshold in the 1986 Regulations, and an explanation from the Dept./NPWS as to for why this extinguished threshold has remained in force for so long**
- 6 the reasons why the 2011 Regulations i.e. Ireland's legislation to achieve full compliance with the Birds Directive – including its decision threshold "in the interests of public health and safety" have been and continue to be ignored for Derogation Declaration purposes (ref. legal advice received in Aug.2020)**
- 7 the continued refusal to align with policy and operational practices – under the Birds Directive threshold - on urban seagulls in all neighbouring EU jurisdictions in respect of public health and safety – notwithstanding UK Brexit**
- 8 the timing of Derogation Declarations relative to the seagull breeding season which starts in mid-April.**

In conclusion, as we advised on 9th December last we have been obliged to communicate with the Minister on these matters and we have also resumed our discussions with our TDs and Councillors, and our MEP and these discussions will now include the PCP matters addressed above. We would ask that you advise your Secretary General on the above.

Yours sincerely

The Balbriggan Community Committee on urban seagulls
Tom Cardiff; Gerry Coffey; Don Costigan; Gene McKenna; Dave Sorensen; Tony Everitt
Peadar O'Kelly; John Keogh; Gerry Newman

Personal signatures not possible due to CoVoD-19 restrictions; email addresses and home addresses previously provided.

Good evening, Mr Cardiff.

I wish to acknowledge receipt of your recent correspondence on the above matter, received in the Wildlife Licencing Unit on 21 and 22 December.

I have examined the position and made enquiries and I wish to advise as follows on behalf of the Department

The consultation process is merely that, a process designed to elicit views of interested persons . The consultation process does not represent any decision and it is not based on any 1986 regulation.

Clearly, no Declaration in respect of 2021/2022 has been made at this time, nor has a determination been made as to which species will be in that declaration, nor the reasons for the inclusion of such species, nor the time periods for which they will apply; nor has the legislative basis for any such derogation which may be made been determined/published at this stage.

The consultation process itself is not bound by any legal process. It is intended to get the views of those who may be interested in the process. It is open to anybody to make comments or observations on this process whether that be from individuals, any local community groups, public bodies, non-governmental organisations or anybody else. Certainly, your views on a derogation in respect of 2021/2022 will of course be welcome. It may be that material along the lines outlined by you in relation to the legal basis for the making any derogation will form part of any views you wish to submit should you indeed wish to submit views and these views will be taken into account when the position in respect of 2021/22 is being examined.

In the meantime, the Department continues with the consultation process in good faith. All views received will be fully considered and taken into account.

Regards

Niall Feery
Wildlife Licencing Unit
National Parks and Wildlife Service

Dear Niall,
Cc John Fitzgerald, PO, DPHH/NPWS

We very much welcome the Dept./NPWS' commitment, as we understand it, from your email of 16 Dec last, to undertake an open Public Consultation process for the 2021.22 Derogation Declarations. As has been acknowledged by the Dept./NPWS and by the Consultative Committee (CC), the urban seagull problem exists in urban areas State-wide. This is in line with evidence throughout Northern Europe, Northern Ireland and Great Britain (NI/GB).

We are very concerned that the Public Consultation process may seek to proceed as heretofore in emulating the historical position which has been based on the 1986 Regulations, in particular the decision thresholds "**represent a threat to public health and safety**" and "**represent a threat to Air Safety**". As we set out in our recent correspondence, should the Consultation process proceed on this basis we are convinced that it would be ultra vires the law, would continue to adversely affect citizens' legal entitlements and would constitute maladministration for reasons set out following:

- a) The EU Birds and Habitats Directives- which the Dept./NPWS purports to be the law here, and which is de jure the law here, specify the decision threshold as being "**in the interests of public health and safety**". In the normal use of the English language the meaning and intent of this threshold is materially different to the 1986 threshold.
- b) The legal advice given to the Dept./NPWS and the CC last August confirms the above. Indeed private legal advice to BCC is emphatic in this regard.
- c) Looking further at the legal position, the Oireachtas determined that the 1986 threshold was not compliant and this gave rise to the enactment of the Wildlife 2000 Act. Section 59 which sets out another materially different threshold to that in 1986 viz. "to preserve public health and safety". This clearly represented the Depts.' position that 1986 Regulations were not compliant and that new legislation was necessary. Furthermore, the descriptive marginal notes for Section 59 (which are not a legal text) state that the Section is being added as "**a saver in the interests of public health and safety**". It is self-evident that the Dept. by its own actions was/is firmly of the view that 1986 regulations were/are not legally compliant – otherwise Section 59 would not have been required. (Most surprisingly, despite this being primary legislation from the Oireachtas, it was never applied).
- d) In 2011, the Dept., for the second time publicly declared that the 1986 threshold was non-compliant and to this end brought forward the 2011 Regulations. For the first time since 1979 (the Birds Directive) the Irish regulations correctly reflect the law and the legal text in the Directive that sets out the decision threshold "**in the interests of public health and safety**" – i.e. the basis on which the decision is taken whether or not protection of citizens is needed. Even more surprisingly the 2011 Regulations have never been implemented and the Dept./NPWS continues to rely on the 1986 decision threshold, notwithstanding that the Oireachtas and the Dept./NPWS, on two occasions, brought forward legislation that sought to amend the 1986 threshold - facts that demonstrably validate our position.
- e) We expect the Dept./NPWS will fully understand our position as set out given our previous relevant correspondence on 9 Dec, 14th Dec, and as referred per arrangement on 2/3rd Nov. to the Dept./NPWS and to the Barrister advising the CC (responses awaited). All of our above points are covered in greater detail in that correspondence which needs to be read in conjunction with this note.

BCC is obliged to once again remind the Dept./NPWS that Ireland remains alone in Northern Europe, including NI/GB, in using an arbitrary national threshold which has been shown twice by the Dept.

itself to have no legal standing. The Dept./NPWS is therefore continuing to deny adequate protections to its citizens from high density seagull colonies that are established and freely proliferating in our urban areas. Clearly the materially higher decision threshold that is still being applied from the 1986 regulations must be a causal factor for the denial of such adequate protections, and use of this threshold should have been discontinued both in 2000 and in 2011 and must be discontinued henceforth in our view. BCC has noted and is exploring further that fact that the decision threshold being applied for Air Safety is also ultra vires the Directives; this too is extremely worrying.

In our view, the Public Consultation process may not properly proceed on the basis of the 1986 Regulations, in particular using the decision threshold “**represent a threat...**”. We are convinced that it is a fundamental principle of public administration that any Government scheme must be compliant with the law, and that Irish law must be consistent with EU Law - failing which, the latter applies as the law. All contributors (individuals, groups, NGOs, businesses etc.) are fully entitled and indeed must know with certainty what legal threshold(s) they are required (the the Dept./NPWS) to meet in order to submit a viable submission/application for a licence/derogation. Once again, the 1986 threshold cannot be properly used in our view.

Furthermore, it is common practice for such State schemes to include transparent and timely publication of results and decisions, and also to include timely appeal mechanisms for instances where a Dept. or public body takes a decision/s to deny or materially modify what is being sought – in this case Derogation licences. We ask to be informed as early as possible as to what the Depts.’ intentions are with regard to all such transparency considerations in the open Public Consultation as proposed.

Should the Dept./NPWS ignore the correct position as set out above and proceed as heretofore we will challenge, including via direct representations to the Minister, the basis for such an approach for the 2021.22 Consultation process. The simple and correct solution is to apply the legal threshold as set out in both the Dept./NPWS own 2011 Regulations and in both of the pertinent EU Directives. There is clearly ample time for this as the 2011 Regulations are already on the statute books and the Dept./NPWS has traditionally published the State-wide Derogation Declarations c. 1st May every year.

Once again, we thank you for your undertaking in email dated 16th December to keep us informed regarding publication of the Public Consultation.

Yours sincerely,

Tom Cardiff and Gerry Coffey,
CC members, and
On behalf of the Balbriggan Community Committee cc’d above

Dear Niall,
(cc John Fitzgerald, PO DPH/NPWS;
we request that you please also copy as appropriate to officer(s) working/connected with the
Consultative Committee on urban seagulls),

Our recent emails since 14 December up to yesterday 21st December refer.

With specific regard to the Public Consultation on Derogations Declarations for 2021.22 we make the following points:

Our email to you yesterday at 16:47 was sent prior to receipt of email from you at 17:34 to an inactive email address (jab.coffey@gmail.com) which we had notified to yourself and Joe McMahon as discontinued. We were reliant on your commitment to inform us of the Public Consultation having been posted on the NPWS website. Note therefore that our email to you yesterday - attached below for convenience - issued prior to your attempted notification to us of the Public Consultation (text copied below).

In our email sequence 14th to 21st December we set out a forensic analysis of the relevant law (Irish and two pertinent EU Directives), including legal advice to your Department, private legal advice received by our Balbriggan committee, and benchmarking vs. neighbouring EU/UK jurisdictions. The emphatic conclusion is that the 1986 Regulations cannot be a valid legal basis for Derogation Declarations because the threshold being applied to the decisions whether or not to protect citizens is materially higher than and therefore not compliant with the Directives, or indeed with Irish law. We also pointed out that this serious legal anomaly also applies to the Air Safety Declarations.

Given that the text used in the Public Notice viz. "*These declarations were made by the Minister in exercising powers conferred under Section 3 of the European Communities (Wildlife Act, 1976) (Amendment) Regulations 1986 (S.I. No. 254 of 1986).*" - is a statement of fact, it ignores the legal fact that the 1986 Regulations are ultra vires based on the decisions of the Oireachtas in the Wildlife Act 2000 and in the 2011 Regulations, both of which legally extinguished the 1986 threshold, and the latter of which brought forward by your Dept./NPWS finally aligned correctly with the two pertinent EU Directives.

Firstly therefore, it is clear that the Dept./NPWS in continuing with 1986 in the Public Notice has carried on as heretofore - using an arbitrary threshold - and has ignored the law and the legal advice it sought and received last August. Clearly anyone setting out a submission to the Consultation must be properly informed as to the proper legal threshold that they are required to meet when seeking a Derogation - and this is **not** the case in the Notice as published.

Secondly, the Public Notice uses the following description of the scope/usage of Declarations : "*The effects of the declarations are to allow the control of certain wild bird species by landowners or their agents where these species are causing serious damage to crops, livestock, fauna or where they represent a threat to public health, throughout the State*". In December 2019 at the second Consultative Committee (CC) our representatives (Balbriggan Community Committee - BCC) were informed that we had been added to the list of Stakeholders for the Public Consultation process and would receive an invitation to submit. We did receive an invitation and we made a comprehensive submission ahead of the closing date on 10th January. The description used in the Public Notice is incorrect as it obviously excludes citizens/community groups, and is therefore incomplete and misleading e.g. as currently described citizens/urban groups are excluded. We put it to you that other communities e.g. in Skerries, Howth, Rush, Dublin City and suburbs and other cities around the country dealing with serious issues from urban seagull colonies would interpret themselves as not being included in the scope of this Consultation. Perhaps this is an oversight. As it stands under the notice, it would appear that urban communities suffering risks of disease or injury and/or public health and safety

risks (by the way, public safety has been omitted from the notice) are not entitled to seek the protections afforded by Derogations,

We specifically refer to our previous comments regarding proper public administration and common standards.

In our capacity as CC members we remind the Dept./NPWS of the First Interim Report (FIR) and Minority Report (MR) submitted in April 2020 which contained several recommendations directly intended for Derogations Declarations e.g. FIR Section 8 which specifically recommended that other impacted communities (in addition to Balbriggan) should receive Derogations in the interests of public health and safety. It is apparent and extremely disconcerting that directly relevant FIR and MR recommendations from April 2020 have not been taken into account in the Public Notice.

We therefore make the following urgent requests:

1. that the Public Notice should be withdrawn forthwith
2. that a new Public Notice should be issued that is a) fully compliant with the two pertinent Directives' (Birds and Habitats) threshold "in the interests of public health and safety" as per the 2011 Regulations and b) that makes it clear that urban communities e.g. those suffering serious issues from seagull colonies, are invited to make submissions as is their entitlement.
3. that the interests of public health and safety of citizens is affirmed to be an overriding priority
4. and that the FIR and MR recommendations (including those relevant to residential areas, schools, hospitals and premises involved in the manufacture, storage, sale and/or consumption of human food) from the Consultative Committee that was set up by a former Minister "to examine impacts of urban seagull colonies and make recommendations" should be reflected in the scope of the Public Consultation and subsequent Derogation Declarations.
5. a revised deadline will be necessary in light of the above

While we recognise it is the holiday period, and CoVid-19 constraints still apply across the board, we request an early response on all of the above because as things stand we do not know whether or not to commission the efforts we had planned towards making a submission; further in this regard we are already receiving enquiries from other impacted areas as to whether it is open to them to submit.

Yours sincerely

Tom Cardiff and Gerry Coffey,
on behalf of the Balbriggan Community Committee

Date Released: Wednesday, December 16, 2020

The current declarations made by the Minister for Culture, Heritage and the Gaeltacht allowing for the control of certain wild bird species are due to expire on 30 April 2021. These declarations were made by the Minister in exercising powers conferred under Section 3 of the European Communities (Wildlife Act, 1976) (Amendment) Regulations 1986 (S.I. No. 254 of 1986).

The effects of the declarations are to allow the control of certain wild bird species by landowners or their agents where these species are causing serious damage to crops, livestock, fauna or where they represent a threat to public health, throughout the State. A separate declaration is made to allow the control of certain wild bird species by airport authorities or their agents throughout the State where these species represent a threat to air-safety. A link to the current Declarations is below.

<https://www.npws.ie/legislation/irish-law/eu-birds-directive-derogations>

As part of the annual review of the declarations, the Department (now the Department of Housing, Local Government and Heritage) is seeking views on the operation of the declarations during the current period. Any proposal to amend the declarations should be accompanied with appropriate documentation to support the proposal.

Accordingly, any comments/proposals you may wish to make should be submitted to the Department of Housing, Local Government and Heritage via e-mail (WildBirdDeclarations@chg.gov.ie) by 5.00pm on Wednesday 20 January 2021

Or post to:

Wildlife Licensing Unit

*National Parks and Wildlife Service
Department of Culture, Heritage and the Gaeltacht
90 North King Street
Dublin 7 D07 N7CV*

Mark Submissions: "Wild Bird Declarations"

Dear Niall,
Cc John Fitzgerald, PO, DPHH/NPWS

We very much welcome the Dept./NPWS' commitment, as we understand it, from your email of 16 Dec last, to undertake an open Public Consultation process for the 2021.22 Derogation Declarations. As has been acknowledged by the Dept./NPWS and by the Consultative Committee (CC), the urban seagull problem exists in urban areas State-wide. This is in line with evidence throughout Northern Europe, Northern Ireland and Great Britain (NI/GB).

We are very concerned that the Public Consultation process may seek to proceed as heretofore in emulating the historical position which has been based on the 1986 Regulations, in particular the decision thresholds "**represent a threat to public health and safety**" and "**represent a threat to Air Safety**". As we set out in our recent correspondence, should the Consultation process proceed on this basis we are convinced that it would be ultra vires the law, would continue to adversely affect citizens' legal entitlements and would constitute maladministration for reasons set out following:

- a) The EU Birds and Habitats Directives- which the Dept./NPWS purports to be the law here, and which is de jure the law here, specify the decision threshold as being "**in the interests of public health and safety**". In the normal use of the English language the meaning and intent of this threshold is materially different to the 1986 threshold.
- b) The legal advice given to the Dept./NPWS and the CC last August confirms the above. Indeed private legal advice to BCC is emphatic in this regard.
- c) Looking further at the legal position, the Oireachtas determined that the 1986 threshold was not compliant and this gave rise to the enactment of the Wildlife 2000 Act. Section 59 which sets out another materially different threshold to that in 1986 viz. "to preserve public health and safety". This clearly represented the Depts.' position that 1986 Regulations were not compliant and that new legislation was necessary. Furthermore, the descriptive marginal notes for Section 59 (which are not a legal text) state that the Section is being added as "**a saver in the interests of public health and safety**". It is self-evident that the Dept. by its own actions was/is firmly of the view that 1986 regulations were/are not legally compliant – otherwise Section 59 would not have been required. (Most surprisingly, despite this being primary legislation from the Oireachtas, it was never applied).
- d) In 2011, the Dept., for the second time publicly declared that the 1986 threshold was non-compliant and to this end brought forward the 2011 Regulations. For the first time since 1979 (the Birds Directive) the Irish regulations correctly reflect the law and the legal text in the Directive that sets out the decision threshold "**in the interests of public health and safety**" – i.e. the basis on which the decision is taken whether or not protection of citizens is needed. Even more surprisingly the 2011 Regulations have never been implemented and the Dept./NPWS continues to rely on the 1986 decision threshold, notwithstanding that the Oireachtas and the Dept./NPWS, on two occasions, brought forward legislation that sought to amend the 1986 threshold - facts that demonstrably validate our position.
- e) We expect the Dept./NPWS will fully understand our position as set out given our previous relevant correspondence on 9 Dec, 14th Dec, and as referred per arrangement on 2/3rd Nov. to the Dept./NPWS and to the Barrister advising the CC (responses awaited). All of our above points are covered in greater detail in that correspondence which needs to be read in conjunction with this note.

BCC is obliged to once again remind the Dept./NPWS that Ireland remains alone in Northern Europe, including NI/GB, in using an arbitrary national threshold which has been shown twice by the Dept.

itself to have no legal standing. The Dept./NPWS is therefore continuing to deny adequate protections to its citizens from high density seagull colonies that are established and freely proliferating in our urban areas. Clearly the materially higher decision threshold that is still being applied from the 1986 regulations must be a causal factor for the denial of such adequate protections, and use of this threshold should have been discontinued both in 2000 and in 2011 and must be discontinued henceforth in our view. BCC has noted and is exploring further that fact that the decision threshold being applied for Air Safety is also ultra vires the Directives; this too is extremely worrying.

In our view, the Public Consultation process may not properly proceed on the basis of the 1986 Regulations, in particular using the decision threshold “**represent a threat...**”. We are convinced that it is a fundamental principle of public administration that any Government scheme must be compliant with the law, and that Irish law must be consistent with EU Law - failing which, the latter applies as the law. All contributors (individuals, groups, NGOs, businesses etc.) are fully entitled and indeed must know with certainty what legal threshold(s) they are required (the the Dept./NPWS) to meet in order to submit a viable submission/application for a licence/derogation. Once again, the 1986 threshold cannot be properly used in our view.

Furthermore, it is common practice for such State schemes to include transparent and timely publication of results and decisions, and also to include timely appeal mechanisms for instances where a Dept. or public body takes a decision/s to deny or materially modify what is being sought – in this case Derogation licences. We ask to be informed as early as possible as to what the Depts.’ intentions are with regard to all such transparency considerations in the open Public Consultation as proposed.

Should the Dept./NPWS ignore the correct position as set out above and proceed as heretofore we will challenge, including via direct representations to the Minister, the basis for such an approach for the 2021.22 Consultation process. The simple and correct solution is to apply the legal threshold as set out in both the Dept./NPWS own 2011 Regulations and in both of the pertinent EU Directives. There is clearly ample time for this as the 2011 Regulations are already on the statute books and the Dept./NPWS has traditionally published the State-wide Derogation Declarations c. 1st May every year.

Once again, we thank you for your undertaking in email dated 16th December to keep us informed regarding publication of the Public Consultation.

Yours sincerely,

Tom Cardiff and Gerry Coffey,
CC members, and
On behalf of the Balbriggan Community Committee cc’d above

Dear Joe,

Our emails in the past few days regarding the CC legal module and our follow up submission of documents for Dr Browne's consideration refer.

We have attached a covering letter and four substantive documents below for Dr Browne's consideration. The covering letter explains our approach with the documents..

Note that we have not cc'd Derek as the former Chair as we understand he has now retired from the CC and will be in 'handover' mode preparing for a replacement Chair. Can you check with Derek whether he needs to be cc'd with this email and attached documents and if so please forward them to him on our behalf? Otherwise, as discussed we are happy to have our email and documents shared with and confined to the CC members.

Kind regards,

Tom Cardff and Gerry Coffey, on behalf of Balbriggan Community Committee cc'd above

On Thu, 29 Oct 2020 at 12:15, Joe McMahon <Joe.McMahon@chg.gov.ie> wrote:

Hi Tom,

Thanks for the Clarification, I deal with so many acronyms with different meanings, so always good to double check.

Joe

From: Tom Cardiff [mailto:thomascardiff2020@gmail.com]

Sent: Thursday 29 October 2020 12:05

To: Joe McMahon

Cc: HC Siobhan Coffey; HC Gene McKenna; HC Don Costigan; HC Dave Sorensen; Peadar O'Kelly; BR Tony Everitt; John Keogh; gerry_newman@yahoo.ie

Subject: Re: Follow up questions from BCC for the CC Legal Module (Gulls Committee)

Good Morning Joe,

Re your question below "*Can I clarify what you mean by private CC communication?*", yes of course.

BCC has always followed the ex-Chair's protocol rather than us cc'ing documents among the CC members. We are providing our follow up legal questions on that basis, but through you given the Chair's resignation and his view as stated on 22/Oct that follow up questions should be addressed with Dr Browne. Therefore, we regard our documents and the replies from Dr. Brown as for circulation by you as Secretary among CC members only.

Kind regards,

Tom and Gerry

On Thu, 29 Oct 2020 at 11:27, Joe McMahon <Joe.McMahon@chg.gov.ie> wrote:

Good Morning Tom,

Thanks for your email.

Can I clarify what you mean by private CC communication? Do you mean that it is private BCC communication, or document and response that can be circulated to the Gulls Consultative Committee membership (NPWS, BWI, Fingal County Council)?

Yes, I can send the questions on to Dr. Browne.

Kind Regards,

Joe

From: Tom Cardiff [mailto:thomascardiff2020@gmail.com]

Sent: Thursday 29 October 2020 11:18

To: Joe McMahon

Cc: HC Siobhan Coffey; HC Gene McKenna; HC Don Costigan; HC Dave Sorensen; Peadar O'Kelly; BR Tony Everitt; John Keogh; gerry_newman@yahoo.ie; Thomas Cardiff

Subject: Follow up questions from BCC for the CC Legal Module

Dear Joe,

We are in touch with you directly as Secretary to the CC given that Derek has notified us of his resignation as Chair.

With reference to our agreement with Derek email (ref email 22 Oct last on follow up legal questions for Dr Browne), we expect to send a document with BCC's follow-up questions to you in the next couple of days.

As our document is a private CC communication (i.e. not for circulation outside CC members), can you confirm that you will send it to Dr Browne on our behalf please?

We anticipate that the response from Dr Browne to our follow up questions should complete BCC's contribution to the legal module, leaving no overhang, from our perspective at least from the legal module, for a new Chair.

Kind regards,

Tom and Gerry on behalf of BCC cc'd above

By email

Joe McMahon
Dept. Housing, Planning and Heritage
Secretary to:

Consultative Committee (CC):

to review the impacts of urban seagull colonies on communities and make recommendations

2nd November 2020

Dear Joe,

As discussed last week, this is our second letter to the CC with accompanying documents in response to Dr. David Browne (BL)'s initial 'Draft' opinion. You will note that Dr Browne's initial opinion has triggered a substantial additional block of work by BCC. The essential legal issues that we raise go the very core of a proper and broad based understanding of the relevant law which must underpin the core work of the CC and must fairly apply in public administration. Without such an understanding the work of the CC and indeed of the Department will be significantly compromised in our view. We would very much appreciate an early referral to Dr Browne as per our correspondence last week. As also discussed, we are happy to have this letter and our attached documents circulated as confidential and confined to the CC members.

BCC acknowledges and appreciates the effort invested in this legal module by former Chair Derek McLoughlin and by Dr Browne. As notified to the former Chair in recent correspondence, we have assembled this follow-up submission to Dr Browne as quickly as possible given CoViD-19 restrictions.

Accordingly, we have attached the following four documents for consideration by Dr Browne viz.:

- I. Clarification requests and follow-up questions focussing on the pertinent legislation (Irish and EU) that is referenced and considered in the initial Draft opinion, and also on what we believe to be other pertinent primary legislation viz. the Wildlife 2000 (Amendment) Act.
- II. Clarification requests and follow-up questions in relation to the Habitats Directive and Natura 2000 as quoted by Dr. Browne in his initial draft opinion.
- III. BCC perceives that there may perhaps be some gaps in Dr Browne's opinion relating to the material that we submitted for consideration. We recognise that Dr Browne may regard the matters we raise here as having being addressed at higher levels in his opinion, however we have asked some follow-up questions and sought some clarifications in these regards.
- IV. The Law Reform Commission's (LRC) 2019 administrative consolidation of the Wildlife Act 1976 (Amended) up to and including the 2011 Regulations SI 477.

BCC believes that full transparency and licencing '***in the interests of public health and safety***' is essential by February 2021 and there is no justification legal or otherwise for any further delay. As a minimum, protection needs to be targeted at urban areas for peoples' homes, schools, creches, hospitals and businesses involving human food. Such an approach needs to recognise and affirm that these locations are unsuitable – in the interests of public health and safety - to be allowed as breeding sites for urban seagull colonies. We believe that a simple, proportionate and downloadable

licence for urban areas (as identified in the CC's First Interim Report recommendation section 8) – similar in format and simplicity to that in Northern Ireland should be implemented. Once that is done, the rest of the work of the CC can proceed apace in the knowledge that at least basic and proportionate legal protection for citizens is in place in the interim and for as long as it takes to achieve a comprehensive solution.

We will await Dr Browne's response to our follow up questions and clarification requests and the indication from the Department flagged to us by the ex-Chair last week as to its intentions, actions and priorities, before we decide our next course of action, notwithstanding continuing work of the CC.

In conclusion, may we also ask you as Secretary to note for the record that BCC has written to the former Chair and expressed our substantial appreciation of his leadership and work on CC matters.

With kind regards,

Tom Cardiff & Gerry Coffey,
on behalf of the Balbriggan Community Committee cc'd in covering email.

Consultative Committee (CC) – Legal Module.

Replying submission from Balbriggan Community Committee in response to the initial 'Draft' legal advice to the CC.

Monday 2nd November 2020

Legal Context:

The Wildlife Act, 1976, and as subsequently amended, provides a general and broad framework for the protection, inter alia, of wild birds. Part II of the Act entitled Wildlife Conservation and Protection also provides that the Minister may grant licences in certain circumstances to capture or kill humanely protected bird species or take their nests or eggs. Section 8 provides that the Minister may make regulations for prescribing any matter referred to in the Act.

The EU Birds Directive (1979) on the conservation of wild birds is implemented, inter alia, under the Wildlife Acts. Under Article 9.1 a) of the Directive Member States may derogate using the threshold **'in the interests of public health and safety'**. The Directive was given effect in Ireland in 1985 according to the Minister at the Second Stage Debate in the Dáil on the Wildlife (Amendment) Bill 1999, enacted in 2000. The European Commission advises in the 'ABC of EU law 2017' on the primacy of Union law, which ensures that **"Union law may not be revoked or amended and that it takes precedence over national law if the two conflict"**. As regards Directives, the Commission advises that **"all institutions, i.e. the legislator, administration and the courts of the Member States, are bound by the Directive and must automatically comply with it and apply it as Union law with primacy they have an obligation to interpret national law in accordance with the Directive"**.

The European Communities (Wildlife Act, 1976) (Amendment) Regulations, 1986 amended the 1976 Act, and removed protection of wild birds in certain circumstances where the Minister is of the opinion that a bird species **'represent a threat to public health and safety'**. This threshold does not appear in the Directive, nor in the 1976 Act, nor as far as we are aware in the national laws of Member States in Northern Europe at least. The 1986 Regulations were approved and implemented in the full knowledge of the provisions of the EU Birds Directive.

The Wildlife (Amendment) Act, 2000 provides in Section 59 that "Nothing in Part II or section 51, of the Principal Act (1976) shall make unlawful anything which is done pursuant to and in accordance with the licence granted in that behalf by the Minister **for the purposes of preserving public health or public safety, including air safety'**". Section 59 does not contain any qualifications, dependencies or caveats. Marginal notes in the Act state **'Saver in the interest of public health and safety'**. While the margin notes are not part of the Act, they do assist in understanding the purpose of the provision. We have studied the Dáil and Seanad Debates on the passage of the 1999 Bill/2000 Act through the Oireachtas and they do not provide any assistance as to the intentions of the 'saver'; reliance on the actual text is therefore required.

Of significance in Section 59 is that the term **"for the purpose of preserving public health or safety"** is also contained in the Wildlife (Northern Ireland) Order 1985 (as amended) Licence. This allows for the killing of certain species, including the taking of their nests and eggs in respect of herring gulls and greater and lesser black-backed gulls. Similar texts are found in the statutory licences in Wales, Scotland and England all of which we understand are intended to implement the requirement of the Birds Directive. We have examined the various Declarations under the 1986 Regulations (acquired via Parliamentary Questions) up to and including the 2020 Regulations and surprisingly we have found no reference to the 2000 Act in any of these legal Declarations. This may be explained in part, though not justified, as the Regulations are made in respect of the 1976 Act without specific reference to it having being amended in the 2000 Act.

The 2011 Regulations, Part I, Section 1 (2) state that **"The Wildlife Act 1976, the Wildlife (Amendment) Act 2000, the Wildlife (Amendment) Act 2010 and these Regulations shall be construed together as one."**

Section 55 of the Regulations provides that subject to certain conditions, the Minister may grant a derogation licence where it is (a) **in the interests of public health and safety**, and (b) in the interests of air safety. To our reading the provision at 55.1.a) "**in the interests of public health and safety**" is the first time this text has appeared in regulations and is consistent with the 'saver' in the marginal notes of the 2000 Act but not with the actual text of Section 59. The 2011 Regulation 55 1 a) utilises the precise language of the Birds Directive Article 9.1.a). However, as Dr Browne states in his opinion, these Regulations have not been implemented and the Department continues to rely on the 1986 Regulations (threshold – **represent a threat to public health and safety** - which appear to be arbitrarily based on the 1976 Act), despite the fact that the Birds Directive was adopted in 1985. In summary on these points, the opinion does not refer to the 2000 Act – a piece of primary legislation which appears to be amended by the 2011 Regulations (secondary legislation), and there seems to be materially conflicting thresholds for the granting (or not) of licences in the interests of public health and safety.

Follow up questions for Dr. Browne

Q1. The obvious and expected text in the Irish legislation, both primary (Acts) and secondary (SI Regulations), should be materially consistent with the relevant text contained in the EU Directive as, under EU Law, it is the law in Ireland. Should we interpret the law here in line with the text of the Directive? If not then the Directive is not the law here. Is it accepted that in the light of the EU Commission's authoritative statements ('ABC of EU Law 2017') that the provisions and text of Article 9 1 a) legally must apply in Ireland regardless of our national versions? If not, under what legal authority do the EU Directive provisions not apply?

Q2 BCC has submitted since 2016 that the 1986 Regulations continue to set a higher material threshold for derogation than the threshold that is prescribed in the Directive at Article 9.1 a). In Dr Browne's 'Draft' legal opinion he states at 3.14. "... **the reference to 'threat' in the 1986 Regulations seems to be a higher threshold than Article 9(1) of the Birds Directive which refers to 'in the interests of public health and safety'**. **Legal advice received privately by BCC is very clear on this point – i.e. that the 1986 Regulations are ultra vires the Directive**, and indeed ultra vires the 2000 Act. Does Dr. Browne agree?

Q3 We ask that Dr Browne set out a legal rationale, in relation to the public health and safety threshold – which is the primary determinant in the State-wide Declaration as to whether or not a derogation is instated to protect citizens, as to how the 1976 Act, the 1986 Regulations, the 2000 Act and the 2011 Regulations may legally be "construed as one"(to quote 2011 Regulations Part 1 1.(2)) when in respect of Derogations they have three materially different thresholds and the Parent Act has no threshold, and none of them refer to the Birds Directive, the actual law in Ireland and the (presumed) source of the threshold being applied in 2011? The only piece of legislation that is consistent with the Birds Directive Derogation texts are the 2011 Regulations which have not been implemented. Specifically, have the 2011 Regulations (secondary legislation) amended Section 59 of the 2000 Act (primary legislation), inter alia to comply with the Birds Directive? Our understanding is that 'parent' Acts may not be amended by secondary legislation as this would bypass the Oireachtas' law-making authority. We ask, therefore, are there material legal doubts with regard to the State-wide Derogation Declarations issued under the 1986 Regulations to date? If there are, what are the legal implications of this, and what is the proper legal text to be used in the threshold in the 2021 and future Derogation State-wide Declarations?

Q4 The text of Section 59 of the Wildlife 2000 Act (Amended), notwithstanding the 'saver' is a UK text which seems to have been imported into Irish Law. Historically, the UK has shown antipathy towards and disdain for the EU as evidenced by Brexit. Caution is therefore necessary in interpreting UK law which purports to apply EU law in its own jurisdictions. BCC does not agree that the UK text (threshold) in Section 59 is compliant with the Birds Directive threshold at Article 9.1.a); i.e. to "preserve public health..." would always be "in the interests of public health", however "in the interests of public health" is clearly not required to meet the higher 'preserve' threshold. The amended threshold in the 2011 regulations vs. the 2000 Act (and indeed the 1986 Regulations) confirms our position. Does Dr Browne agree? If Dr Browne

does not agree, are we legally permitted to interpret any regulations under Section 59 (or the 1986 Regulations) as being compliant with the Birds Directive based on the EU Commission's statement at paragraph 3?

Q5. If the Department is somehow satisfied that the 1986 Regulations are compliant with the Directive, why did the Oireachtas pass the Wildlife 2000 (Amendment) Act that clearly states differently by approving a 'saver in the interests of public health and safety'? BCC has also been advised that primary legislation viz. legislation passed by the Oireachtas (in this case the 2000 Act) takes legal precedence over secondary legislation viz. 1986 Regulations, which as far as we are aware, were not approved by the Oireachtas and therefore function as administratively amendable secondary legislation not signed into law by the President. Are we correct in concluding that the threshold ("**represent a threat...**") in the 1976 Act/1986 Regulations was legally extinguished in Irish law in 1985 when we adopted the Birds Directive and/or in the 2000 Act Section 59, and/or in the 2011 Regulations?

Q6. It seems that the Department has been applying (for 34 years) a materially higher and apparently arbitrary threshold to licencing decisions that is not aligned to the Directive or any Irish legislation that we can identify. In our direct experience, and we believe in several other communities, this licencing approach been and continues to be seriously inimical, in a demonstrable and practical way, to the genuine interests of public health and safety of communities negatively impacted by urban seagull colonies in Ireland. A simple desktop comparison of legal precedents for urban seagull control (much evidence provided by BCC) in all neighbouring jurisdictions with the lack of any similar controls in Ireland over many years provides incontrovertible evidence in BCC's view. Does Dr Browne agree with BCC that the precedents for legal control actions across Europe under the Directive threshold is material and practical evidence that Irish citizens are not protected and are not being treated equally under the Birds Directive?

Q7. In addition to the threshold "**in the interests of public health and safety**" specified in the 'saver' at Section 59 in the Wildlife (Amendment) 2000 Act, a further clear and important fact in BCC's view is that it also affirms the authority of the Minister to issue derogation licences notwithstanding the material provisions of the parent 1976 Act (as amended), viz:

59.—Nothing in Part II, or section 51, of the Principal Act shall make unlawful any thing which is done pursuant to and in accordance with a licence granted in that behalf by the Minister for the purpose of preserving public health or public safety, including air safety.

Saver in interest of public health and safety.

In his opinion Dr. Browne states at 5.35. "**While ultimately it is a question for the Minister to determine whether the threshold has been met...**". In BCC's view section 59, which amended the 1976 Act that is still used to this day, clearly establishes the overriding priority of public health and safety, over and above the protection of Bird species and all related provisions of Part II and Section 51 of the Principal Act. Does Br Browne agree? Furthermore, does Dr Browne agree that the clear intentions of the Oireachtas in enacting the 2000 Act were to align with the Birds Directive imported in 1985, and that such intentions therefore extend to and apply in the later 2011 Regulations?

Q8 BCC asks are we correct in concluding that no licences or State-wide Declarations have ever been issued (on public health and/or safety grounds) under and/or with stated reference to Section 59?

Q9 With regard to Dr Browne's comment at 5.33. "**In terms of the Birds Directive, there is a derogation option in the interests of public health and safety. I am not aware of any specific authority where this particular phrase has been interpreted to mean that one has to demonstrate an impact on both public health and safety or public health only.**"

BCC needs further clarity on what Dr Browne means in his above comment.

In context, of serious concern to BCC and in regard to the above, we refer to the fact that the former Director of Services in Fingal County Council stated to BCC in writing that the scale and nature of any public administration response to the urban seagull issue would be directly influenced by whether or not it was officially recognised as a public health and safety issue. Furthermore, in the context of “**conditions of risk**” as required by the Birds Directive to be identified when considering the granting or not of Derogations, BCC points to the AMR issue e.g. as specifically a public health issue, a categorisation that also applies to the conditions of risk and control criteria cited for a number of other wild bird species in the Declarations. We emphasise that in our view there is a serious material difference, which may inform or misinform what needs to be the appropriate and essential public administration response to issues - between what might be correctly or incorrectly categorised as a “public health and safety” issue vs. a “public safety” issue. This is what we have asked Dr Browne to clarify his comment at 5.33 in his opinion.

Q10 If BCC’s conclusions are materially valid, is it appropriate, legally speaking, for the Department to submit draft regulations for the Minister to sign as being legally valid as heretofore, and if so submitted by the Department to the Minister, is it appropriate, legally speaking, for the Minister to sign them – given the difference in the thresholds viz. “**pose a threat to public health and safety**” which does not appear in any primary legislation that BCC can find, vs. “**in the interests of public health and safety**”, which is enshrined in each of the Directives, the 2000 Act ‘saver’, and the 2011 Regulations?

Q11 If BCC’s conclusions are materially valid, does the Department have a legal responsibility to look back and offer redress to any persons or organisations adversely and negatively affected by illegality of previously issued or denied licences, Declarations and prosecutions?

Q12 If BCC’s conclusions are materially correct, is it therefore correct to say that the Department wrongly advised Ministers over the years which resulted in invalid regulations being signed and implemented?

Q13 Is BCC correct in concluding that the most legally sound text to use is as set out in the Article 9.1.a) of the Directive and as noted in the margins of section 59 of the 2000 Act and as specified in the 2011 Regulations? (BCC has previously provided a written statement from the Secretary to the Raad Van Stadt (RVS) that the Dutch authorities completely transposed the Directive into their national law – replacing their own legislation and that legal position underpinned the August 2016 judgement in the RVS).

Q14 Was the proper and legally appropriate course for the Department following the 1985 adoption of the Directive to use the threshold “in the interests of public health and safety” with immediate effect in regulations, licencing and State-wide Derogation Declarations, as the basis for the operation of all future licencing from 1985?

Q15 BCC has separately attached a copy of the Law Reform Commission’s (LRC) consolidation (published in 2019) of the Wildlife Act 1976 (amended) – including the 1986 Regulations, the Wildlife 2000 Act and the 2011 Regulations. BCC notes that the LRC’s consolidation incorporates the ‘saver in the interests of public health and safety’ from the 2000 Act, and also that it sets the threshold for derogation decisions to be “**pose a threat to public health and safety**”, rather than the correct legal text that should be being applied from the Birds Directive Article 9.1a) which is “**in the interests of public health and safety**”. It seems to BCC that the LRC is correctly interpreting the law as it is being applied in Ireland (1986 Regulations). Does Dr Browne agree? Should the Dept./NPWS advise the LRC to modify its consolidation document?

In conclusion, BCC’s view is that there is no justification legal or otherwise in delaying any further the basic legal protections “in the interests of public health and safety” that are due to Irish citizens by right under national and EU law and our entitlement to equal treatment under EU law. BCC would appreciate legal opinion on all of the above from Dr Browne.

*** ends here

Balbriggan Community Committee (BCC) follow-up questions and clarification requests regarding the initial draft legal opinion from Dr Browne BL.

2 November 2020

A. High-level questions from BCC on foot of the legal document.

- a) BCC asks Dr Browne if his opinion is inferring that control measures in the “**interests of public health and safety**” (including for the protection against injury and/or disease) ref. 2011 Regulations, are legally subordinate to and/or conditional upon, conservation considerations, plans or measures – and that such control measures are precluded from being taken until such as may exist conservation considerations, plans or measures are all addressed as a higher than and preclusive priority to the interests of public health and safety as catered for in Article 9.1.a) of the Birds Directive?

If such an opinion is being inferred, BCC asks i) that it be explained with its legal rationale, ii) how can such an opinion be reconciled with the statement in the document at 5.35 that...” **ultimately it is a matter for the Minister to determine whether the threshold has been met**”, and also with the presence of and nature of the “saver in the interests of public health and safety” inserted at section 59 in the Wildlife 2000 Act (Amended), among repeated provisions for public health and safety in the Habitats Directive, the Birds Directive, 1986 Regulations and 2011 Regulations?

In the Wildlife 2000 (Amendment Act), not referenced in the opinion, there is a specific and explicit legislative “saver in the interests of public health and safety as follows:

59.—Nothing in Part II, or section 51, of the Principal Act shall make unlawful any thing which is done pursuant to and in accordance with a licence granted in that behalf by the Minister for the purpose of preserving public health or public safety, including air safety. Saver in interest of public health and safety.

Such a deliberate and comprehensive ‘saver’ by virtue of being inserted to primary legislation, in addition to all of the other public health and safety provisions in the Birds Directive and in the Habitats Directive, and in addition to the universal norms of public administration legislation and policy on public health and safety, especially when considered in the face of serious “**conditions of risk**” in the urban seagull context already officially acknowledged (by the Dept./NPWS and the Minister), strongly indicates, in BCC’s view, a legislative intention on the part of the Oireachtas that overriding priority be given to public health and safety over the interests and animal/bird species. Does Dr Browne agree?

- b) Further on Section 59 and the public health and safety context and the other legislation and SIs, as the 1976 Act itself does not have any provision for “public health and safety”, and the 1986 Regulations amending the 1976 Act, as used (legally or not apparently being open to serious question vs. the Birds Directive) in the State-wide declarations to this day (34 years later) seem to have an arbitrary threshold “pose a threat to public health and safety”, and that threshold seems to be in conflict with the 2000 Act ‘saver in the interests of public health and safety’, and also in conflict with the

Birds Directive threshold – supposedly the law in Ireland – that is “in the interests of public health and safety”, and that we are talking about the legal threshold for the granting or not of derogations to protect people, BCC asks what is the legal argument, if any, for claiming that ‘the interests of public health and safety’ are subordinate to bird conservation interests and/or research of same?

- c) In BCC’s view, there is neither any legal nor any reasonable obstacle to prevent Ireland from availing of the voluminous research on urban seagull colonies already documented in close neighbouring jurisdictions and we have provided many examples of such research - much of which was verified by UK seagull expert of forty years Peter Rock in CC meeting 3. Does Dr Browne agree that, in the round, there are no such legal or reasonable obstacles, and that any local/Irish research into urban seagull colonies that is necessary may readily be accomplished in parallel to control measures in urban areas already (since 2016 and escalating) experiencing serious negative impacts from high-density urban colonies?

It was stated in CC meeting 2 “*that this work (research) has already been done*”. We have shown that the two most recent ‘national’ and clearly substantive urban seagull policies (The Netherlands 2016, and England 2020) both pursue urban seagull research **in parallel** with control measures in the interests of public health and safety. Older national policies in neighbouring jurisdictions have used either or both General licences and Class licences to enable and/or deliver protection to human communities in the interests of public health and safety for years **at the same** time as many research programmes have been and continue to be undertaken. BCC asks for clarity as to what legal reason(s) if any exists to make Irish communities have to wait any longer for protection from urban seagull colonies?

As BCC pointed out in the Netherlands August 2016, Raad Van Stadt case – the Supreme court ruled that controls under the Birds Directive Article 9.1 a) are legitimate **in parallel and conjunction with** research under the explicit research provision in the Directive at Article 9.1.b) – on thirteen individual counts on public health and safety grounds. As also pointed out by BCC, the Dutch replaced verbatim their national legislation with the Birds Directive. BCC asks Dr Browne why he did not refer to the Dutch case in his opinion, does he regard the Dutch Supreme Court case irrelevant to the Irish context, and if so will he set out why?

The opinion acknowledges the fact that the new policy for England, just like the Dutch policy, provides for control measures on urban seagulls with the overriding priority being the protection of public health and safety and life, but the opinion does not acknowledge the fact that research on urban seagulls will be undertaken over time in parallel with the control policy.

The research in parallel with controls that are the overriding priority in the interests of public health and safety is a feature of the new English system and of the recently adopted Dutch system – i.e. that the interests of public health and safety are clearly and legally neither subordinate nor secondary to the research or other conservation interests in our neighbouring UK and EU jurisdictions?

In summary therefore BCC’s views are that a) there is no legal requirement or obstacle that prevents reliance on urban seagull research in neighbouring EU and UK jurisdictions when considering whether or not to grant derogations in the interests of public health and safety, and b) there is

no legal obstacle in the Directive Article 9 1) a) and 9.1 b) provisions to implementing controls on urban seagulls in the interests of public health and safety while also conducting any necessary research in parallel with such controls, and c) it is within the Minister's authority to make the necessary determinations in respect of a) and b) preceding. Does Dr Browne agree?

- d) Statutory Instruments (SIs) under the Wildlife Legislation and the Habitats Directive apply the threshold '**overriding priority for public health and safety**' in considerations regarding bird species and natural habitat. The Dept./NPWS, de facto, continues to refuse to accept the overriding priority of public health and safety when considering Derogations and a view was stated by CC members that such a priority is not explicitly stated in the Birds Directive and therefore that principal does not apply.

In BCC's view this is an unreasonable position considered in the round, not least because the Dept./NPWS is not even applying the Birds Directive threshold at Article 9.1.a) as the law in the State-wide Derogations Declarations (using 1976 Act and 1986 Regulations), nor indeed is it applying the 2000 Act, but also because it is a general principle of law and of public administration that human rights and legitimate needs such as protection of health, safety and life are higher than those of animals. Does Dr Browne agree with BCC on these points?

- e) If the Dept./NPWS and the CC were/are legally correct to claim (CC meeting 4) that absence of an explicit statement of overriding priority for public health and safety in the Birds Directive means that such a principle does not legally apply, BCC therefore points to the fact that none of the Birds Directive, the Habitats Directive or Natura 2002 mentions "urban habitat" or "urban locations" in any way shape or form. On the contrary, the Directives and Natura 2002 specifically address "natural habitat" which is then clearly defined in the Annexes – none of which describe urban locations as either natural or protected habitats. A corollary would logically apply therefore that 'urban' locations do not enjoy protection as 'natural habitats' under the Directives or under Natura 2000. Does Dr Browne agree?
- f) The overriding priority of human rights, including protection of life and respect for a peoples' homes, is embedded in international Human rights conventions, the EU Treaty, and Bunreacht na hÉireann and therefore must apply in the Birds Directive in the context of acknowledged and serious "conditions of risk" from proliferating urban seagull colonies.

As well as personal rights, the right to respect for one's home is also guaranteed in the Irish Human Rights and Equality Commission Act 2014, Article 8.1. The Dept./NPWS de fact compels citizens to allow expanding colonies of a wild bird species capable of and on record as seriously injuring people, especially children, to nest and breed and rear its young over several months – a period of high aggression from these birds - on and around their homes and out-buildings often resulting in attack and injury, denial of safe access/egress to/from the home, denial of home comfort and sleep, denial of use of gardens, making it dangerous to safely maintain the home, and serious damage to property and possessions, and will prosecute people for protecting themselves, their families and children and/or their property by removing nests. This deliberate policy, when legal provisions exist in the law to protect people, in BCC's view. is in direct contravention of legally protected civil and human rights, and of Article 9.1.a) of the Directive. Does Dr Browne agree?

Bunreacht na hÉireann provides for the introduction of laws to reflect the provisions of the Constitution, it simply cannot be the case that the fundamental rights and protections of citizens are compromised and subject to the protection of bird species while the Directive provides for processes to be completed before citizens can be protected. There is no guarantee that the State may ever or in a timely manner complete these processes for reasons of capacity, expertise and resources (human and financial) and the impact of external circumstances such as a pandemic. The resources issue is abundantly clear as per references below *. The EU Treaties are an abundant source of protection of human rights and values with well-established case law. Similarly, the protections of citizens as set out in the Treaties may not properly be compromised by a Directive that is itself rooted in these Treaties. Accordingly, BCC is of the view that there is an arguable case that the Birds Directive, which is part of Irish law, if it claims to subordinate the protection of citizens in their homes and schools et al. to the interests of wild birds, is in breach of the Irish Constitution and of civil and human rights law, and that it is ultra vires the Treaties of Rome – does Dr Browne agree?

(Given that the Roughan and O'Donovan camera/drone study - commissioned by Fingal County Council (FCC) - of small areas of Balbriggan, Howth and Skerries conclusively showed 451 urban seagull nests including - high-density colonies - on homes, schools and business, and given that DCHG/NPWS for over thirty years has issued licences for removal of urban seagull nests, eggs and chicks, on grounds of “public health and safety**” – for homes, schools, businesses and hospitals, and given that the ‘window of opportunity’ for intervention to prevent seagulls from nesting is roughly six weeks from late April to early June, and given that NPWS stated processing time from application for a licence, a Ranger visit and inspection, a report back to the Department and a decision to grant/reject a licence is 6-8 weeks, and given the fact that there is just one Ranger for all Wildlife duties in Dublin North, it should not be legally required that what are demonstrably necessary (based on long established precedent) measures in the interests of public health and safety must be foregone in all cases where the existing administrative process can never be performed in the necessary volumes in the necessary timeframes?*

BCC wishes to remind of the fact that FCC stated in CC 3 that when something official has to go out to the public, its policy is to ‘let things issue’ if there is a deadline and there is any threat to it not being met. This is also the experience of BCC members who have worked in a number of Government Departments. When pressed on this matter in PQs (previously provided) DCHG/NPWS stated that “it does its best with available resources” – again demonstrating a failure/refusal to acknowledge what is meant by being statutorily responsible for acting in and serving the legitimate “the interests of public health and safety”. Given that public health and safety issues with seagull nests have already been officially and legally acknowledged by the Dept./NPWS for years, we are certain that the Dept. of Housing, Planning and Heritage/NPWS could or would ever have the resources that would be needed to visit and report on thousands of urban seagull nest sites within the period mid-April to mid-June and take all necessary actions in the interests of public health and safety.)

- g) In the legal context where a serious risk to the safety of citizens has already been determined by a Minister – as was decided and implemented in the 2017 Derogation and as is catered for in Section 59 of the 2000 Act - and the species that is harming us is being enabled to continue to proliferate and harm us – since 2017 - by conscious decisions of the State not to act further, for a period of years, to protect citizens in deference to the Dept./NPWS' administrative review (2018) of Derogations, and in deference to this current CC on urban seagulls whose recommendations for the 2020 Derogations were ignored, and given the following facts:

- No EU ECJ case has been taken (over forty years) against control actions taken on public health and safety grounds (the opinion refers only to ECJ hunting cases), despite thousands of such control actions across all member states over forty years under the Birds Directive – i.e. there is no legal precedent/challenge against actions in the interests of public health and safety over the life of the Birds Directive
- The Dutch approach 2016 Supreme Court decision that was based on 13 public health and safety counts (Directive transposed completely into Dutch Law)
- The most recent national policy available for scrutiny being the new English policy – in which clear and unambiguous overriding priority is given to the “protection of public health and safety, and protection of life”
- The Wildlife Act 2000 (Amended) “saver in the interests of public health and safety” is clear on the priority of health and safety and the Ministers authority
- The fact that the Minister made a determination in 2017 that the threshold for control actions was met (Balbriggan Derogation)
- The Dept./NPWS has officially acknowledged the State-wide scale of the urban seagull problem
- The volume of peer-reviewed evidence as to the seriousness of Antimicrobial resistance and the implication of urban seagulls in AMR dispersal
- The long-standing precedents for protection of citizens from urban seagull colonies in every neighbouring jurisdiction – except Ireland

BCC asks what are the legal reasons – if any such exists- to justify continued denial of protections to all citizens/communities impacted by the urban seagull problem here in Ireland?

- h) There are a number of references to “alternative solutions” throughout the legal document and it appears that Dr Browne may not be aware of the background evidential material already covered in and prior to CC meetings regarding “alternative solutions” e.g. the fact that UK seagull expert Peter Rock stated the futility of “alternative solutions” in CC 3 and is widely published on this matter, and ample evidence from our community was also provided. BCC provided excerpts of Mr Rock’s (and others’) published work on this subject, and on the Dutch approach (August 2016, Supreme Court), in our Community Report in December 2017 and our material was ignored by DCHG/NPWS and the 2018 Review. BCC also provided extensive evidence of failed “alternative solutions” in Balbriggan at the time of the 2017 Derogation, and this was accepted by the Minister in reaching her determination.

Furthermore, as has been demonstrated in many neighbouring jurisdictions since the early 2000s– unchallenged in/by the ECJ - the only effective and least harm measure – in the interests of public health and safety - to deter seagulls from nesting in unsuitable urban areas is systematically repeated nest removal. The facts around this have been widely demonstrated and proven. As was stated in CC meeting 3 after Rock’s submission “so nothing works”.

In the context of established, filmed and documented urban seagull nesting behaviours, what are commonly described as alternative solutions e.g. spikes, nets, fire gels, scary balloons, alarm sounds, fake birds of prey and indeed larger constructs have been resoundingly debunked over several years and in all neighbouring jurisdictions as a complete waste of time, money and effort – and as a failure to influence the colonies.

A recent installation of major bird deterrent (alarm noises) systems on the Central Bank in Dublin is now the subject of major objections from local residents as the alarm calls fire off at 3am. Diageo spent a six-figure sum in James' Street to deter seagulls from sensitive areas of the plant – since described to BCC as an unsuccessful venture. Google paid €30,000 on nets to deter gulls and they just moved to the next building. The Lourdes Hospital in Drogheda has spent – without success (confirmed to BCC be an attending consultant at the Hospital) - many thousands of euro on at least two 'licences' to try to deter seagulls “from sensitive areas of the hospital” and “from attacking staff and patients” – to quote DCHG/NPWS Press release. Irish Water is working to complete a €42m project to cover the two main treated water reservoirs for Dublin and seagull colonies have had to be repeatedly scared off of these reservoirs as they were depositing their AMR-laden faeces in the treated water supply to the city – an impact described as “serious damage” on its licence rather than “public health and safety”; one wonders what was the ‘condition of risk’ from serious damage to the treated water? How, therefore, can it be alright for large urban colonies to breed on our homes, schools – as shown by RO'D in 2018 - and hospitals?

If the legal opinion, or other members of the CC, seek to reinstate or reset in any way the evidence-based position already reached on “alternative solutions” as a precondition to derogations being granted for urban seagull issues, BCC requests that Dr. Browne is provided with all of the relevant background material and asked to refine the opinion accordingly.

Extracts from the legal document and specific comments:

With regard to the stated legal obligations on Member States at 2.2 in the legal document opposite referring to Article 2 of the Birds Directive:

- a) “.....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.***”

- 1 In relation to this legal requirement, by whom, how often, and by what means, are transparent actions and metrics to meet the six legally mandated criteria (“Member States must...”) in ***red*** above to be benchmarked, measured, monitored, updated, quality-assured and reflected in national compliance measure of Member States, **in particular in relation to urban-living seagull colonies**, and in particular in Ireland?

2.2. Member States must take the requisite measures to maintain the population of bird species 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

2.4. Article 4 of the Birds Directive refers to special conservation measures for Annex I bird species in order to ensure their survival and reproduction in their area of distribution.⁵

- 2 What are the legal consequences, if any, of failure by a member state to comply with this legally mandated requirement and how are such consequences put into effect legally speaking?

- 3 The official **total population** of urban-nesting herring gull pairs recorded in Seabird 2000 (the last national Census) was just 209 pairs in the Republic of Ireland. Fingal County Council's 2018 Roughan O'Donovan drone/camera survey of just three very small areas in Balbriggan, Skerries and Howth counted 451 nesting pairs* as follows

Balbriggan area approximately 1/7 th size of Derogation Zone	- 232 ** nests
Skerries – just a few streets and housing estates	72 nests
Howth – just a few streets in a residential area	147 nests

* just one school in Balbriggan had 21 nests and over 50 chicks on its roof
 ** the total nests in an area of Balbriggan approximately just 1/7th of the size of the Derogation zone greatly exceeded the national total recorded in 2002 – 16 years earlier. How does that situation with the urban population map onto the mandatory legal requirements and criteria set out for Member States set out at 2.2 above and in 2.4 of the legal document opposite to "**adapt the population of these species**"?

- 4 Is the phrase "**area of distribution**" legally defined in the Directives? What does it mean relative to "**natural habitat**" as described and listed – in detail in the Annexes of in the Habitats Directive and Natura 2000 (see below).

- 5 Article 1 of the Birds Directive states that the Directive applies to "**birds, their eggs, nests and habitats**" – there is no mention of "**urban habitat**" or indeed the word "**urban**" in any of the Birds Directive, the Habitats Directive or Natura 2000 or on its Strategic Areas of Concern (SACs), Sites of Community Importance (SCI lists) or on its web-based viewer <https://natura2000.eea.europa.eu/#>

According to Natura 2000 (see below) habitat sites must be listed on the EU's Register of adopted SACs/SCIs in order to have legal effect. The fact that no urban sites are mentioned in either of the Directives or listed on the EU's Register or the

pertinent Annexes implies/means that “urban” sites do not have any legal protection under the Habitats Directive, the Birds Directive or Natura 2000.

Does Dr. Browne agree, and will he clarify therefore whether 2.2 in his Draft opinion applies to urban locations throughout the country that are not Registered with the EU as SAC’s or SCI’s?

- 6 Conservation interests claim that “the interests of public health and safety” do not have overriding authority because that phrase is not used in Article 9.1.a), although it is used in the Habitats Directive in the context of planning and SACs/SCIs. During a planning phase, even before any form of human habitation, they accept that the interests of public health and safety have overriding priority even in SAC’s/SIC’s being directly impacted by planned developments – albeit that encroachments are to be addressed by conservation plans. However, to claim that overriding priority of public health and safety does not apply after actual human habitation of the developed site has taken place seems to BCC be illogical and unreasonable.

Does Dr Browne agree, especially also considering the unconstrained scope of the ‘saver in the interests of public health and safety in the Wildlife 2000 Act Amended?

- 7 At CC meeting 3 in February 2020 UK Seagull Expert Peter Rock (nominated by BWI to advise the CC, and extensively quoted by BCC in our December 2017 Community Report that was submitted to DCHG/NPWS and subsequently referred by the Dept. into the 2018 Review where it was consigned to an appendix and not addressed) made the following statements (paraphrases, minutes awaited), which he has also published widely:
- urban living gulls have made a switch to urban life from rural/sea habitat, and do not/will not revert to rural/sea habitat – reasons include safer and more efficient and successful breeding, higher temperatures, food availability, lack of predators, lack of resistance; Mr Rock also stated his disagreement – based on GPS tracking and observations - with the RSPB “who like to think of urban colonies/habitat as a potential ‘refuge’ situation from which seaward colonies might be replenished in the future”. That

is to say that any view that incubating urban populations of seagulls might be a temporary arrangement that will result in them reverting to natural habitat is misguided and wrong based on the evidence and on expert advice. Hence the need to separate rural and urban populations for policy purposes as recognised by the Dutch in 2016 and the English in 2020.

- the new national urban gull policy for England published in January 2020 specifically separates for policy purposes considerations about rural-living and urban-living seagull colonies, an approach that appears consistent with habitat delineations in the Birds Directive, the Habitats Directive and Natura 2000, and, also de facto in clear agreement with Mr Rock's assessment, and acknowledging that a) the two branches of the species do not mix, b) urban colonies are thriving and need to be managed for reasons of public health and safety, and that no legal limits will be applied to controls of urban colonies; BCC notes that the first Draft legal opinion does not mention these facts
- the Dutch Supreme Court ruling in August 2016 authorised an extensive programme of controls on urban seagull colonies in the three Municipalities of Aalkmaar, Leiden and Haarlem – **on 13 counts of public health and safety**, overturning a 2014 injunction on every original count.
- the Dutch programme involved parallel over time research and control measure activity, in fact invoking the research provision in Article 9.1.b) the Birds Directive as well as and in parallel with Article 9.1.a) in the interests of public health and safety
- it would appear by dint of not being specified or listed in SAC's/SCIs urban locations are not protected under the Habitats or the Birds Directives, nor under Natura 2000's Registration provisions to list SACs/SCIs - the mechanism that gives sites legal status.

BCC believes that cumulatively, all of the above strongly suggests that a) urban locations not listed as SACs or SCIs on the EU Register of such sites are not included in the habitat protections of the Habitat/Birds Directives and b) that the legal obligation on Member States described at 2.2 does not therefore apply to urban locations. Does Dr Browne agree?

If the legal opinion is that urban locations are protected irrespective as to whether or not they are Registered on EU Lists of SACs and SCIs, and that the legal obligation on member states set out at 2.2 in the opinion does apply to urban locations, BCC asks that

2.5. Gulls are identified in Part B of Annex II to the Birds Directive under the heading of *Laridae*. Article 7 of the Birds Directive provides that, owing to their population level, geographical distribution and reproductive rate throughout the Community, the species listed in Annex II may be hunted under national legislation. Member States must ensure that the hunting of these species does not jeopardise conservation efforts in their distribution area.⁶

the legal rationale for such an opinion be set out by Dr Browne., including consideration of all of the, and the implications for the State’s compliance with 2.2 in his opinion.

If the legal opinion is that urban locations that are not registered on the EU SAC/SCI lists are not protected by the Directives, doesn’t that imply that the legal obligations on Member States set out at 2.2 logically cannot apply to urban areas? Does Dr Browne agree?

- 8 Dr Browne refers (2.14) to an ECJ case law requirement that “criteria.....must be reproduced in National provisions ...plus Netherlands, Footnote 11, 1990” – but then does not refer at all to the Dutch Supreme Court case in 2016 as provided by BCC repeatedly since August 2016. BCC was advised in writing by the secretary to the Raad Van Stadt in 2016 that the Dutch fully replaced their national laws on bird conservation with the Birds Directive.

Is it Dr Browne’s opinion that the precedent set in relation to controls and research urban seagulls in the Dutch ruling has no bearing on or relevance to the situation with urban seagull colonies here in Ireland, especially considering EU Law and equality of EU citizens under the law?

Are Irish citizens entitled or not entitled to equal protections of the interests of their public health and safety as those granted to Dutch citizens under the Birds Directive? If that is the opinion, will Dr Browne set out his rationale please?

- 9 With regard to the phrase “*in their area of distribution*” how is the concept of legally protected ‘*natural habitat(s)*’ to be differentiated from the situation in Ireland where currently, with the exception of a legally zoned part of Balbriggan and its districts and a number of individual case licences, seagull colonies are afforded unlimited range and distribution well beyond such protected natural habitats as listed in legally protected Irish SACs and SICs – for reproduction and for foraging - without any apparent form of species management or control as may be legally mandated per 2.2 subject to replies to our earlier questions, if it actually applies to urban areas, above and the derogation provision at Article 9.1.a)?

2.14. The criteria which the Member States must meet in order to derogate from the prohibitions laid down in the Directive must be reproduced in specific national provisions.¹¹

¹¹ *Commission of the European Communities v Kingdom of Netherlands* (C-339/87) [1990] E.C.R. 1-0851, para.28.

10 How does Ireland legally justify the position here – i.e. the deliberate denial of protection of the “*interests of public health and safety*” of Irish citizens from the negative impacts of urban seagull colonies - as against the legal precedents in every one of our neighbouring jurisdictions in the UK and Northern Europe – where seagulls are in fact listed for hunting as well as nest controls – including in Northern Ireland (licence previously provided), and including also in the Republic of Ireland for protection of other bird species (including shooting licences issue by NPWS), but not for the protection of e.g. our children, elderly, vulnerable, immuno-compromised citizens?

In BCC’s view, notwithstanding the proven public health and safety concerns regarding urban seagull colonies, and the precedents for control actions across the UK and Northern Europe, it is clear that in England, Northern Ireland and throughout the UK, in France and the Netherlands, and in the rest of Northern Europe – it is neither legally required, correct nor wise - to seek to conflate species conservation status in natural habitats with their status in adopted urban *locations* none of which are mentioned in or covered by the Habitats Directive or Natura 2000 – as it has been demonstrated that urban-living seagull colonies do not and will not revert to the species’ natural habitat.

BCC asks what are the legal justifications available to, imposed by law or claimed by the Dept./NPWS for denying and continuing to delay protection of Irish citizens in the urban seagull issues context?

Pending a transparent answer to the above question either from the Dept./NPWS or an explicit legal opinion, in the round, that legally validates the Dept./NPWS’ decision to continue to deny protections to Irish citizens, as things stand therefore, Ireland’s authorities are clearly content to enable the proliferation of urban-living seagull species in apparently unprotected urban ‘habitat’? areas, in deliberate and continued denial of “the interests of public health and safety” and the protection against “injury or disease... and the protection against serious damage” (2011 Regulations) and in total contrast to species management policies and actions in every one of our neighbouring jurisdictions.

2.6. Article 9 of the Birds Directive provides that Member States may derogate from the provisions of Articles 5 to 8 of the Directive, where there is no other satisfactory solution, for the following reasons⁶:

- a) in the interests of public health and safety or in the interests of air safety or to prevent serious damage to crops, livestock, forests, fisheries and water or 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.

2.7. Where a derogation is granted, it must specify⁷:

- 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.

⁶ Directive 2009/147/EC Art.7(1).

⁷ Directive 2009/147/EC Art.9(1). While Article 9 is analogous to Article 6(4) of the Habitats Directive, the threshold is not as high, given that Article 6(4) requires that, in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected.

BCC asks is the current policy which is subordinating and delaying actions “in the interests of public health and safety”, in the round, legally justifiable?

- 11 In relation to 2.6 a) opposite/above, BCC has already addressed the “***no other satisfactory solutions***” point substantively above, and further adds that DCHG/NPWS declined several invitations in writing in 2016 to visit Balbriggan sites to witness the situation and assess such “***alternative solutions***” and their proven failure. DCHG/NPWS also chose to ignore the Roughan O’Donovan camera evidence – and ultimately, Minister Humphreys had made a legal determination (seemingly well-grounded under the saver in the interests of public health and safety in the Wildlife 2000 Amended Act given the Dept. has not implemented the Birds Directive yet) regarding the Balbriggan derogation that there was/is no other satisfactory alternative solution(s).

BCC points out that it is common convention, when listing criteria in text, especially threshold criteria pertaining to important decisions, to list them in order of importance and/or priority – hence “the interests of public health and safety” are first in the list viz. Article 9.1.a) – specified above b) Air safety, c) crops/damage, d) other fauna.

BCC asks whether there is a legal precedent for attributing relative priority to criteria based on the order in which they are listed in the text, or are all criteria so listed regarded as having equal legal ‘weight’?

BCC also points out that each of the criteria in 2.6 a) are routinely applied in licencing control up to an including killing for a number bird species in Ireland, with the exception of urban living seagull colonies – a phenomenon which has only occurred in Ireland since closure of landfills started in 2013 – this a fact acknowledged by DCHG/NPWS’ in a press release in July 2015 – previously provided, available if required.

In BCC’s view, Dept./NPWS’ claimed legally compliant position (“We obey the Law” – CC meeting 3), not just on the urban seagull issue, but on derogations generally is wrong and indefensible. The Dept. does not base its Derogations Declarations or its case licences on the Birds Directive – continuing to reference the 1976 Act and the 1986 regulations. As such, this constitutes materially legally inconsistent and deficient public

maladministration given its statutory responsibilities to correctly administer the Wildlife legislation. Does Dr Browne agree with BCC's view on this matter?

If Dr Browne agrees that the Dept./NPWS is not obeying or correctly applying the law, particularly but not exclusively insofar as it is applying a materially higher threshold to the legal decision whether or not to grant Derogations than what is in fact the legal threshold (in the Birds Directive), in BCC's view this constitutes knowing and culpable maladministration, such that it enables and permits serious harm and damage to occur in impacted communities, and is subjecting them to injuriously unequal treatment compared to millions of other EU citizens. Does Dr Browne agree?

- 12 In relation to 2.7 c) "**conditions of risk**" risk is defined as "**the possibility of something bad happening in the future**" (Oxford dictionary), : **a possibility of loss or injury : someone or something that creates or suggests a hazard**. It is abundantly clear that communities being compelled by current Irish policy to accept high-density urban seagull colonies (Roughan O'Donovan camera/drone 2018) on homes, schools, hospitals et al are already in a far worse situation than at merely at 'risk', and are being subjected to actual serious harm and actual injury, in some cases requiring medical treatment and in some cases (documented) requiring hospitalization, and to risks of disease, infection and "possible" AMR contamination – in addition to serious damage to property and financial loss (NPWS' issued licences over several years refer), including substantial funds wasted on so called "alternative solutions" described to CC 3 as "futile and a waste of time and money" by invited UK gull expert Peter Rock last February.

Does Dr Browne agree that the "**conditions of risk**" definition and the evidence summarised above from formal evidence previously provided and in the public domain, satisfy the "**conditions of risk**" criteria in the Directive, or is it his legal opinion that "**conditions of risk**" must be set out, examined by the authority, and confirmed to meet the legal threshold "in the interests of public health and safety" at every individual nesting site, indeed thousands of such sites, before a legally valid Derogation may be granted?

In relation to footnote 7 opposite above i.e. the reference to that Habitat's Directive Article 6.4 and protection of the overall coherence of Natura 2000 opposite. It is BCC's

understanding that the Habitats Directive is exclusively concerned with the legal protection of 'natural habitats' and "natural range", also with provisions for "Special Areas of Conservation (SACs)" and/or "priority species". Specifically, the words '**urban**' or '**urban habitat**' are not used anywhere in the Habitats Directive, likewise they are not used in the Birds Directive.

We have already asked for an opinion above at paragraph 5 what is the legal interpretation of "**area of distribution**", in the urban seagull context, and whether it is supposed to mean that urban seagull colonies can – legally protected -establish, breed and forage wherever they choose to? If that is the opinion, how can that be "in the interests of public health and safety" given the already official and legally acknowledged "**conditions of risk**" and satisfaction of the threshold "in the interests of public health and safety" as determined by the Minister in the 2017 Balbriggan Derogation?

BCC rejects any contention that "**area of distribution**" for seagull species, or any wild bird or animal species for that matter, means or intends to mean **unlimited range**, in particular for breeding and foraging. Does Dr Browne agree?

Similarly, as seagulls can be hunted across the EU, including in Northern Ireland, and in the Republic to protect other bird species ,and as we have also repeated the direct expert advice given to the CC that urban seagull colonies (based on years of leg-ringing, observation, GPS tracking and verified population trends (Peter Rock)) that informed the recent and new English and Dutch national policies - "**do not**" and "**will never**" revert to seaward habitats – "**why would they?**".

BCC believes therefore, that it is essential to seriously question what the status quo suggests is either an unintentional default, or a legally valid conservation programme, that is allowing urban seagull colonies to proliferate, for years now, unmanaged and un-resisted - causing major distress, harm and damage – in urban areas that are apparently not covered by the Birds or Habitats Directives or Natura 2000, and that ,evidentially, are not receiving from the Dept./NPWS the legally mandated extensive attentions specified at 2.2 in the opinion?

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.

Above is an excerpt from 6.4 of the Habitats Directive as extracted by BCC.

BCC believes that answering such questioning must correctly and legally balance the legitimate and legally protected interests of public health and safety, and that this must be an overriding priority at this stage, with whatever research is legally required to be undertaken in parallel to protection of impacted communities. Does Dr Browne agree?

Opposite/above is the full text of section 4 of article 6 of the Habitats Directive the second paragraph of which seems to be omitted from Dr Browne's reference in his legal opinion. Please note the prominence of "*public health and public safety*" in the omitted paragraph. Furthermore, Article 16 of the Habitats Directive sets out the Derogation provisions (including "*in the interests of public health and safety*" for the foregoing of Articles 12- 15 a) and b) – all qualified in respect of species "*in their natural range*".

BCC contends that urban locations do not constitute either '*natural habitat*' or '*natural range*', or a legitimate/protected *area of distribution* for an aquatic species that is obviously fully adapted for life as a seabird, just as logically as it would be unnatural and unwise for a human family to build a home in the middle of a herring gull colony on Lambay Island. We understand that Lambay may be 'full' anyway. Herring gulls have been documented and filmed entering homes, shops, schools and various human use premises. Does the legal position regard such locations as being in their natural range and protected as such? If so, will Dr Browne set out the rationale please?

Therefore, in the round, BCC asks Dr Browne for his legal opinion as to whether the de facto compulsion of urban families, reasonably now numbered in their thousands nationally, by the Dept./NPWS, who claimed in CC meeting 3 that "we obey the law", to accept urban seagull colonies nesting on their homes, under already officially acknowledged and serious "conditions of risk", and apparently indefinitely, given the performance of the Dept./NPWS since 2016 on the issue, is legally sound and justified?

- 13 With reference to Dr Browne's statement at 2.21 opposite where he states that "while the judgements concern derogations in the case of hunting, in my view the general principles apply when considering the derogation provision in Article 9 of the Birds Directive"

2.21. While the judgments concern derogations in the case of hunting, in my view the general principles apply when considering the derogation provision in Article 9 of the Birds Directive.

BCC views this another way, especially in light of the fact that there are many thousands of reported bird control interventions, including seagulls, in the interests of public health and safety from all member states going back for very many years, refer to -

https://ec.europa.eu/environment/nature/knowledge/rep_birds/index_en.htm

BCC notes that none of the ECJ case law that Dr Browne has cited in his document was concerned with “***the interests of public health and safety***”, and BCC believes that it must surely be significant that there are no ECJ cases (bird controls in the interests of public health and safety) on record in the public domain – in BCC’s view an important fact that clearly reflects the legal position that public health and safety related legal determinations are of an overriding priority that has never been challenged in the ECJ, and that has been vindicated in the Dutch 2016 case.

BCC has looked up the Dáil debates(various stages) on the Wildlife 2000 Act and notes that the ‘saver’ was contained in the Draft Bill, i.e. it was not inserted as an amendment by the Dáil or the Seanad, and that the Bill itself took fifteen years to bring to ratification. In other words, it seems clear to BCC that the Wildlife Act 2000 saver in the interests of public health and safety must have been drafted into the Bill as an attempt to comply with the Birds Directive provision adopted here in 1985, because there is a) no public health and safety provision in the 1976 Act, and b) the 1986 Regulations a year later use a higher threshold “pose a threat to public health and safety”.

BCC asks for Dr. Browne’s opinion with regard to the Wildlife Act 2000 ‘saver’ and, the fact that it has never been implemented, the fact that the State persists to date with the higher threshold in the 1986 Regulations, whether that threshold is in fact illegal in the light of the 2000 Act saver, and whether that higher threshold is materially damaging to the interests of the public health and safety of Irish citizens when one compares the precedents for protection of citizens in every one of our neighbouring jurisdictions with the obvious absence of such protections here in Ireland – in similar circumstances (urban seagull issues) and under the Birds Directive provision in Article 9.1.a).

14 Notwithstanding, the Habitats Directive and the Birds Directive repeatedly give highest priority to “the interests of public health and safety” in the legal derogation texts. We repeat some of our key questions viz.

- are “**the interests of public health and safety**” being claimed by the Department or within the CC, or in the legal opinion to be subordinate/secondary to conservation interests? If so, why is this not stated explicitly and justified in the opinion?
- as the Derogation provisions require a description of “**conditions of risk**”, and risk is defined (Oxford dictionary) as “something bad that could possibly happen in the future”, and BCC and many others have shown that injuries and harm, including potential AMR contamination from seagull faeces, and serious damage, cost and loss are not a “risk(s)”, but in fact are bad things that are already happening widely.

Is it or is it not the clearly and legally the case – as determined by Minister Humphreys in February 2017 (Ref. Wildlife Act 2000 ‘saver’) - that evidence-based circumstances in communities afflicted by negative impacts of high density urban seagull colonies have already greatly exceeded the **conditions of risk** threshold for intervention that is specified in the Directive, by virtue of ‘bad things that are already happening’ to them – and therefore heightened priority for interventions is essential “**in the interests of public health and safety**”?

In considering this question, BCC believes it must be acknowledged that nesting gulls return to previously successful nest sites and that colonies expand on this localisation basis – i.e. the ecology of the species makes it highly likely that the “conditions of risk” and negative impacts thereof will recur and indeed worsen in severity every breeding season unless systematically disrupted. Photographic evidence and testimonies from families for these worsening conditions was provided in BCC’s community report 2017 and ignored by the Dept./NPWS.

15 With specific regard to section 3 of the legal document dealing with Irish Law, BCC makes the following points:

3.4. Notwithstanding the provisions of the Act, the European Communities (Wildlife Act, 1976) (Amendment) Regulations 1986 (S.I. No.254 of 1986) (the “1986 Regulations”) provide that where the Minister is of the opinion that a species referred to in the First Schedule to the Regulations— (i) is a threat to public health or safety, (ii) is likely to cause serious damage to crops, livestock, fisheries or forestry, (iii) is likely to cause damage to flora and fauna, the Minister may declare that, for the purpose of preventing disease or injury, the species may be captured or killed in any part of the State or throughout the State by any of the means, arrangements or methods set out in the Second Schedule to these Regulations,

3.4 “Notwithstanding the provisions of the act.....the 1986 regulations provide that where the minister is of the opinion.....1) is (sic) (the word “represent” is used in the 2020 Declaration) a **threat** to public health or safety,....serious damage to crops, livestock, fisheries.....damage to flora/fauna, the Minister may declarespecies may be captured or killed in any part of or throughout the state”

In 2017 the Minister made the above legal determination in respect of parts of Balbriggan and its districts based on community evidence provided, and on multiple written witness accounts (residential, schools and businesses), and on direct representations and witness accounts from public representatives across all political parties including those living in Balbriggan and its districts. The evidence provided included proof so called alternative solutions (spikes, wires, fake birds of prey) had been total ineffective.

As previously stated DCHG/NPWS declined several written invitations (copies available if required) to visit affected sites in Balbriggan, in so doing refusing, without explanation, to witness and assess the conditions of risk or the plethora of failed alternative solutions.

The Director of Fingal County Council Services at that time did visit several sites, spoke directly to the people at those sites – and subsequently expressed his view in CC meeting 1 that “**this burden (negative impacts of urban seagull colonies) should not be borne by communities**” – minutes awaited.

BCC understands that Dr. Browne read our Community Report Dec. 2017 which provided evidence of many failed and very unsatisfactory “alternative solutions”, and this evidence was accepted by the Minister.

BCC asks if Dr. Browne would explain further what seems to be equivocation in his opinion with regard to the ‘alternative solutions’ requirements having been met or not, and that he also consider the expert advice of UK expert Peter Rock on the matter of ‘alternative solutions’?

3.8. The current State-wide Declaration which was signed on 21 May 2020 was made pursuant to the 1986 Regulations and revoked a previous Declaration dated 28 April 2020. Schedule 1 to the Declaration lists the species which are controlled, and which include the herring gull (*Larus Argentatus*), the greater black-backed gull (*Larus Marinus*) and the lesser black-backed gull (*Larus Fuscus*). Those three species are protected for the period from 1 May 2020 to 30 April 2021 but only within the area within the boundary map at Schedule 2 to the Declaration (which broadly covers the Balbriggan area). The stated reason is threat to public safety and the prescribed method of control is to take the nest or to take the eggs.

3.8 Bearing in mind that the legislation provides for prosecution and criminalisation of offenders, including substantial fines and potential imprisonment, the manner of the implementation of the 2020/21 Declaration – the legal means for control of wild birds State-wide - seems to have been nothing short of shambolic in that it was not posted until 14th May, leaving a full 2 week gap – a legal vacuum - from the expiry of the old Declaration; when it was eventually posted on 14th May it contained errors in that the specified Schedules were not included; in the next attempt to post it, the Map in Schedule 2 was omitted – seemingly making the seagull measures legal State-wide for two days, it was then correctly posted on 16th May, and then revoked and re-posted on 21st May. This level of underperformance with regard to an important legal instrument “in the interest of public health and safety” again shows the Department’s disregard, with apparent impunity, for the legitimate interests of citizens, and indeed a proper standard for the observance of and implementation of the law. BCC received several phone calls and text messages asking us what was the legal position again pointing to the lack of transparency on behalf of DCHG/NPWS – with apparent impunity as no public announcements were made to explain the situation. No other Government Department to BCC’s knowledge at least, operates on such a shabby and mediocre basis regarding legal matters, especially those that directly affect the general public.

BCC was invited by DCHG/NPWS at the 2nd CC meeting on December 4th to make a submission to the Department by 10th January 2021 regarding the 2020/21 Declaration –which we did. Our submission was not acknowledged until we complained in February of that fact. Legitimate questions that we asked about the process were neither acknowledged nor answered by the Department. From 1st May when the new Declaration was due out, our community lost two full weeks of time to take control actions - from the total ‘nesting period window’ of 6 weeks – because of the Department’s errors and delays in posting the Declaration –which it neither explained nor publicised.

The 2020/21 Declaration process failures – which affected the entire country, for all listed species for farmers etc., demonstrated a continuing and inexcusable disregard,

3.10. I should also emphasise that I have a particular concern that the prescribed form of the species control in the Declaration (which was made pursuant to the 1986 Regulations) is not compatible with the restrictive criteria in Article 9 of the Birds Directive for the following reasons.

3.11. First, while the cited reason of public safety is broadly compatible with the first indent in Article 9(1)(a) of the Birds Directive, Article 9 also provides that Member States may only derogate from the provisions of Articles 5 to 8 where there is no other satisfactory solution.

3.12. It does not appear to me from looking at the face of the Declaration that there is any evidence that the Minister has excluded the possibility that there may be an alternative satisfactory solution (although I should say that I have only looked at the Declaration which is publicly available and not any of the background materials).

3.13. Secondly, it is not immediately evident that the Declaration complies with the restrictions in Article 9(2) of the Birds Directive. While it does refer to the species which are subject to the derogation, it does not appear to specify (a) the conditions of risk and the circumstances of time and place under which such derogations may be granted or (b) 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; or (c) the controls which will be carried out.

3.14. Thirdly, the reference to ‘threat’ in the 1986 Regulations seems to be a higher threshold than Article 9(1) of the Birds Directive which refers to ‘in the interests of public health and safety’.

with apparent impunity, by DCHG/NPWS for their responsibility to act “*in the interests of public health and safety*”.

BCC discusses these points here because implementing the law properly is as important as the law itself, not just for reasons of jurisprudence, but for probity in public administration.

The opinion points to a number of material inconsistencies and errors on the part of the Department and essentially BCC is pointing to the real life impacts of such failures on citizens, which it would appear are of no cause for care or concern within the Dept./NPWS given that no explanation or apology was published for the mishandling of the 2020 Declaration. It is unacceptable to BCC and indeed reprehensible in our view, that the Department/NPWS has continued to procrastinate and deliberately delay – for almost five years now, and therefore deny, protection of “the interests of public health and safety”.

Looking further at 3:10 – 3:14 in the round, BCC makes the following points:

Dr Browne’s document at paragraph 3.12 states “...that it does not appear to me (him) looking at the face of the Declaration that there is any evidence that the Minister has excluded the possibility that there may be an alternative satisfactory solution...(although I should say that I have only looked at the Declaration which is publicly available and not any of the background materials”.

- The EU Directive obviously applies to all Member states. It is therefore a European Directive and the decisions and legally compliant actions of other member states must be relevant to Ireland – on citizens’ equality grounds and on grounds of legal precedent under the same law and in the same general circumstances.

This is so because of the superior jurisdiction of the ECJ and the fact that member states are dealing with the same species, the same urban behaviours, the same issues and the same serious and negative impacts on its citizens – as has been the subject of profuse evidence and widespread control programmes across the EU.

In fact there is proven inter-country migration of a relevant species i.e. the Mediterranean gull (heavily implicated in AMR dispersal – EU CORDIS (Swedish) study previously provided by BCC) which is seen prolifically in our cities and around our eastern and southern coasts. Herring gulls have been GPS-tracked and observed using leg-rings as migrating between the UK, Ireland (Wexford, Peter Rock) France, Spain and Portugal – the latter three countries classed by the ECDC as “AMR Hotspots”. Documented AMR-contaminated Herring gulls ringed and observed across Europe and the UK have been observed as having come from the Kuanas Landfill in Lithuania – evidence previously provided by BCC.

BCC has seen no evidence - and is confident that there is no such evidence - to suggest that urban-living gulls in Ireland are materially different to urban-living gulls across the EU in terms of behaviour and negative impacts.

It is reasonable therefore as a matter of law and the equality rights of Irish EU citizens to apply the evidence of EU member states’ remedial policies and actions “***in the interests of public health and safety***” – none of which have ever been challenged in the ECJ - here in Ireland.

Furthermore, details provided to the Department, the 2018 Review and the CC of the EU Commission’s strategic ‘One Health’ policy (addressing health-relevant links between humans, animals and the environment), a policy which has been embraced by all EU member states, are very clear on these points. As a recent practical example in Ireland – previously provided by BCC – Teagasc issued formal alerts and advice to the Irish Farming community regarding the proven transfer of AMR from animals to humans – because such has been tested and proven. It is difficult if not impossible (McMahon) to prove and test transfer from wild birds – though the absence of evidence is not evidence of absence. In the case of such potentially very serious risks, and abundance of caution is the required response of impacted communities.

- Further in relation to legal precedents, when one considers the range of species that have been listed unchanged over many years for controls up to and including killing,

BCC would contend that the actual impacts of these species on urban human populations are nil by comparison with the negative impacts of high-density urban seagull colonies over many years now. AMR contamination e.g. may have sinister or even deadly consequences for a person compared to the disease concerns that are apparently associated with species listed for killing nationwide. This situation is patently a legal nonsense in BCC's view.

- Clearly many EU countries have determined repeatedly over several years that there are no “satisfactory alternative solutions” other than systematic nest removal. It is therefore only reasonable and logical, while there are already numerous evidence-based examples of this fact in urban areas here in Ireland, that a similar conclusion must apply here, otherwise, if there were any satisfactory alternative solutions, they would be plentiful in evidence by now as the other countries have been dealing with this issue since the early 2000s when they began closing their landfills. Ireland had a derogation on our landfill closures and did not commence closures until 2013.
- If further confirmation is required, UK Gull expert Peter Rock stated in CC 3 based on his 40 years of studying urban gulls that the conventional range of so-called “alternative measures e.g. spikes, fake birds of prey, scary sounds, gels, scary balloons, nets are “futile, a waste of time, effort and expense”; after Mr Rock's comments on “so called alternative solutions” BWI observed “so nothing works then”.

Mr Rock also stated many reasons why urban living seagull colonies do not and will not revert to seaward/rural living. BCC has repeatedly asked for the minutes of the meeting where Mr Rock gave his views on these matters to be published – to no avail, and we quoted Mr Rock and his GPS experiments in our December 2017 Community Report which as ignored by DCHG and the 2018 Review which DCHG persistently stated from September 2016 (correspondence available) would address all such and related matters. If such minutes are now available BCC believes that they should be copied to Dr Browne to alleviate his concerns as expressed about ‘no alternative solutions’.

- With reference to 3.13, it would appear to BCC that Dr. Browne is implying that the Declaration – which describes itself as the Minister’s evidence-based opinion, should include statements of evidence covering “conditions of risk” etc., authority and controls. If such is in fact mandatory under the Directive, it would appear to BCC to be merely a drafting issue. If there is anything more substantive involved this, it has obviously been resolved in all other Member States where citizens have been afforded protection under the Directive’s provisions for many years – substantial evidence previously provided.

Furthermore, the phrase “conditions of risk” (as required in the Declaration) – by definition (Oxford Dictionary) describes potential bad things that might happen in the future. In BCC’s view, surely a description of bad things that have already actually happened - i.e. the risks are already being realised - and are continuing to happen year on year in higher numbers should also be described.

With reference to 3:14:

Whereas Dr Browne’s opinion uses the terms “***seems to be a higher threshold***”, the expert legal drafting advice that BCC has received is emphatic that the language used in the Declaration ***in respect of all listed species (“represents a threat to public health and safety”*** – the actual Regulations states !is a threat...) is without doubt or ambiguity materially non-compliant with the language (“***in the interests of public health and safety***”) as specified in both the Birds Directive and the Habitats Directive and the National legislation,

In fact, since receiving the legal opinion, BCC has identified the ‘saver in the interests of public health and safety’ in the Wildlife 2000 Act, and also the Law Reform Commission’s consolidation of the Wildlife Acts – which specifies the higher threshold “represent a threat to public safety” as the ‘in force’ provision, despite the 2000 Act saver, the 2011 Regulations and the Birds and Habitats Directives specifying the lower threshold ‘in the interests of public health and safety’.

Such a substantive variance with the text is regarded as a serious breach of legal intent by professional drafters of legislation, in this case unique, to our knowledge, in the EU, and raises deep concerns around what appear to deliberate actions of a Government Department. DCHG/NPWS has not responded to BCC's repeated concerns on this point as raised formally by us and our public representatives since 2016, including in the 2018 review, that the Department claimed would address all perceived threats. Likewise, BCC's concern on this point repeatedly raised in the CC has still not appeared in minutes, nor has it been addressed in any way.

If the Department, independently or otherwise, knowingly subverted the provisions and intentions of a Directive by setting and persisting with a threshold concerning public health and safety higher and therefore in non-compliance with the law, and as a result clearly placed and continues to place citizens at a material and serious disadvantage either for the purpose of affording a greater protection to bird species, (a root cause of our community's concerns) or for the purpose of delaying or avoiding its legal obligation to protect citizens, either proposition presents an appalling vista.

Where Dr Browne sets out his "*particular concern*" in 3.10, and elaborates in 3.11 regarding '*no other satisfactory solution*' and in 3.13 '*regarding conditions of risk*' - it appears to BCC that he seems to be overlooking or perhaps even second guessing the Minister's prerogative and authority to develop and act on his/her "opinion" in granting derogations – that would of course be evidence-based - that he himself acknowledges earlier in 3.4., and is in fact enshrined as an unconditional 'saver' in the Wildlife 2000 Act.

Perhaps these are merely 'drafting issues' for the wording of the Declaration? BCC has noted that Dr Browne himself qualifies his concerns/comments on the basis that he has only looked at the face of the Declaration and not at any of the background materials – some of which we have alluded to in our comments above in order to assist insight.

3.16. It seems to me that the national system for allowing derogations under Article 9 of the Birds Directive is through State-wide declarations made by the Minister pursuant to the Act.³¹ For the reasons outlined above, I have doubts that the provisions in s.22 of the Act and the 1986 Regulations are inconsistent with Article 9 of the Birds Directive. For a start, the Act is national legislation which preceded the original 1979 Birds Directive (Directive 79/409/EEC) and, while it has been amended since then, appears to be concerned with a domestic regime for wildlife protection (including wild birds).

3.17. This is fortified by the fact that Article 9 of the Birds Directive would appear to be transposed in any event by Reg.54 and Reg.55 of the 2011 Regulations and it would be otiose to include these provisions in the 2011 Regulations if the derogation regime had been adequately transposed in the Act and / or the 1986 Regulations.

3.18. Reg.55, which applies to derogation licences for birds, provides that any person may apply to the Minister for a derogation licence from complying with the requirements of the provisions of Reg.53.

3.19. Where there is no other satisfactory solution, the Minister may, following consultation with any other Minister or Ministers of the Government having relevant responsibilities or functions where appropriate, in respect of any species of naturally occurring bird in the wild state referred to in Article 1 of the Birds Directive, grant a derogation licence to one or more persons, where it is

- a) in the interests of public health and safety,
- b) in the interests of air safety

3.14 Dr Browne’s comment that the reference to the term “threat” in the 1986 Regulations “seems to be a higher threshold than Article 9.1.a) of the Birds Directive which refers to “the interests of public health and safety”.

Firstly, BCC, based on professional advice we have received from legal drafters, contends with very high confidence that the specification of the term “threat to public health and safety” in the 1986 Regulations/Declaration is definitely, and categorically setting a higher threshold than what is specified in Article 9.1 a) viz. “the interests of public health and safety”

Clearly the ‘represent a threat to public health and safety’ is also materially inconsistent with the Wildlife 2000 Act ‘saver in the interests of public health and safety’.

Secondly, professional advice received by BCC is that this material difference in the threshold being applied vs. what is specified in the legislation renders the State-wide Declarations (**for all species**), as materially ultra vires the legislation/regulations.

Furthermore, all of this pertains to protection of Irish citizens and the interests of our public health and safety – on an equal basis with all other EU citizens under the same Directive, dealing with the same circumstances, and as BCC has been spotlighting this matter to the Department in writing since 2016, in the 2018 review, and since we entered the CC.

It seems now clearly and legally evident that Irish citizens have been and continue to be denied legal protection as catered for in the legislation such that affected communities continue to be seriously harmed and put at serious risk.

In the round therefore, BCC asks does Dr. Browne agree that Irish citizens are being denied legally available protections, and that such continued denial by the Dept./NPWS is legally unjustifiable?

3.16 3.21

It appears to BCC that Dr Browne is saying that the 1986 Regulations are non-compliant with the Birds Directive and that Ireland continues to apply the National

Note below is an extract from the 2011 Regulations 55 as referred to in the legal opinion

(3) In relation to a European Site that hosts a priority natural habitat type or priority species, the only imperative reasons of overriding public interest that may be considered are those relating to—

(a) human health,

(b) public safety,

(c) beneficial consequences of primary importance to the environment, or

(d) subject to *paragraph (5)*, and having obtained an opinion from the European Commission, other imperative reasons of overriding public interest.

(4) In relation to a European Site that does not host a priority natural habitat type or priority species, the imperative reasons of overriding public interest may also include those of a social or economic nature.

Acts 1976/1986 Regulations, whereas the 2011 Regulations (54 and 55) – which are not referred to in the Declaration of State-wide Derogations or in individual case licences received by BCC via PQ – are intended to be the (legally mandatory under EU law) transposition of the Birds Directive into Irish law.

BCC has examined the 2011 Regulations and we have extracted the following points that appear relevant to various comments in Dr Browne’s document:

2011 regulations Part 5, Section 43 dealing with plans/projects that may impact on European sites of importance:

Once again, even in the case of SACs, we see the **imperative reasons of overriding public interest and the issues that are paramount are a) human health and b) human safety**, and not only that, in relation to European sites that **“do not have a priority natural habitat” imperative reasons of overriding public interest may also include those of a “social or economic nature”**.

The domestic home is the foundation of our civil society, respect for which is demanded and protected under Human and Civil rights legislation. Our children are supposed to be safe in their schools. People are supposed to be safe in hospitals. Homes, schools, hospitals, and businesses should not have to bear recurring and substantial damage costs caused by urban-living seagull colonies – and the detailed considerations involved are clearly **“of a social and economic nature”**.

It seems perfectly reasonable and logical to BCC that **“the interests of public health and safety”** of people in their homes, schools, hospitals, businesses et al – logically, and legally must qualify as imperative reasons of overriding public interest when one sees that even draft plans at greenfield sites are empowered/required to invoke these provisions, if they apply, even in SACs, SCIs and areas of priority natural habit.

2011 Regulations 54 (Flora and fauna and habitats) and 55 (Birds) – extract opposite above - are referred to in Dr. Browne’s document, where once again we see **“in the interests of public health and safety”** as the first-listed criteria.

Derogations — birds

55.] (1) Any person may apply to the Minister for a derogation licence from complying with the requirements of the provisions of *Regulation 53*.

(2) Where there is no other satisfactory solution, the Minister may, following consultation with any other Minister or Ministers of the Government having relevant responsibilities or functions where appropriate, in respect of any species of naturally occurring bird in the wild state referred to in Article 1 of the Birds Directive, grant a derogation licence to one or more persons, where it is—

- (a) in the interests of public health and safety,
- (b) in the interests of air safety,
- (c) to prevent serious damage to crops, livestock, forests, fisheries or water,
- (d) for the protection of flora or fauna,
- (e) for the purposes of research or teaching, of re-population, of re-introduction or for the breeding necessary for these purposes, or
- (f) to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.

(3) A derogation licence granted under *paragraph (2)* shall be subject to such conditions, restrictions, limitations or requirements as the Minister considers appropriate.

(4) Any conditions, restrictions, limitations or requirements to which a derogation licence under *paragraph (2)* is subject shall be specified therein.

(5) Without prejudice to any conditions, restrictions, limitations or requirements specified therein, a derogation licence granted under this Regulation is subject to the provisions of subsections (2) to (5) of section 14 of the Protection of Animals (Amendment) Act 1965.

(6) The derogation licence granted under *paragraph (2)* must specify—

- (a) the species which are subject to the derogation licence,
- (b) the means, arrangements or methods authorized for capture or kill
- (c) the conditions of risk and the circumstances of time and place in which such derogation licence is 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, and
- (e) the controls which will be carried out.

(7) The Minister shall forward to the European Commission each year a report on the derogations to which *paragraph (2)* relates.

It seems clear to BCC that, as is/was the case in the 1986 Regulations, it nonetheless is a matter for the Minister, “following consultations with any other Minister or Ministers of the Government having relevant responsibilities or functions as appropriate” to make the determination regarding the threshold and the implementation of derogations.

It also seems clear to BCC from the saver in the Wildlife ‘2000’ Act saver in the interests of public health and safety that the Minister has the ultimate authority to issue licences on public health and safety grounds notwithstanding the provisions of Part II of the Principal Act. Does Dr. Browne agree?

BCC points out that our five TDs wrote in 2018 to the Ministers for Health and for Local Government on the urban seagulls issue, and both Ministers replied formally, in writing – previously provided, that this (urban seagull issue) was “solely” a matter for the then DCHG/NPWS Minister Josepha Madigan.

There is pressing substantial evidence, extensive legal precedents across the UK and EU, and strong legal grounds for prioritisation of the interests of public health and safety at the next available opportunity viz. the 2021 breeding season which starts in February, and the 2021 Derogations.. Does Dr Browne agree, and if he does not agree will he set out the legal justification for any further delay of protection of citizens beyond this next opportunity?

16 In section 4 of the legal Document, Dr Browne refers to “**the legal position in the UK**”, now post-Brexit, which is understandably very similar to the EU Directive given the UK’s substantial contribution to that Directive as an EU member. BCC submits the following points and questions:

- i. **BCC asks why the legal opinion does not mention the fact that General Licences in use for many years continue to be available post-Brexit to download (i.e. not subject to application/issue requirements) in Northern Ireland (provided previously), Scotland and Wales, and include the pertinent seagull species for**

4.3. These licences can be issued to individuals on a case-by-case basis or granted annually for use by an ‘authorised person’ (usually the landowner, occupier or someone authorised by them).

4.4. NE gull control through individual licences, which will need to be prioritised. Natural England will consider the strength of need in each licence application individually but generally protecting human life and health will be the overriding priority. Any control undertaken under other purposes such as preventing serious damage and conserving wild birds and flora or fauna will need to be targeted. NE changed its gull licensing regime in January 2020 to protect declining numbers of herring gulls and lesser black-backed gulls in England.²³

controls on public health and safety grounds up to an including lethal controls in the case of Northern Ireland – this is an unchanged position since Brexit that has existed for many years under the UK’s EU membership.

- ii. In 4.3 opposite/above the Document sets out to describe the licences issuing policy, however it does not describe the ‘class licencing’ policy whereby licences are issued to Local Authorities and competent contract services providers – which BCC is aware is by far the most common and far-reaching licencing arrangement in the urban seagull context in the UK. We provided Edinburgh’s 2018 national Review (BBC) of controls across the UK’s Councils.

In BCC’s view, such an omission is likely to be misleading for readers not familiar with the background detail. BCC provided a detailed summary of all UK Local Authorities (Published in 2018 by the Scottish authorities and available again if required) acting under licences with contractors – this extent of UK activity is not conveyed by the description at 4.3. of licencing arrangements. BCC asks did Dr Browne consider the 2018 document in reaching his opinion?

Does Dr Browne acknowledge the scale of the ‘class licencing’ legal structure for urban seagull issues in the UK and its scale across Local Authorities throughout the UK?

- iii. With regard to the English policy, the document acknowledges the “overriding priority to the protection of public health and safety, and the protection of life”, and also states at 4.4. that “NE changed its gull licencing regime in January 2020 to protect declining numbers of Herring Gulls and Lesser Black-backed Gulls in England.

The Department and the CC is aware that BCC provided a detailed statement of the UK policy from the Chair of NE to Minister Villiers in March 2020. The policy – explicitly and unambiguously- makes a distinction between urban-living seagull colonies and rural living colonies and sets legal limits in the following respects (a

fact that we believe echoes our points above about protected habitats under the Birds and Habitats Directives vs. unprotected 'urban' locations):

- **a legal limit of 5%** of known population counts for control purposes will be applied to controls of rural –living (natural habitat) species because of serious concerns about decline and abuse of the previous general licence regime – subsequently explained further to relate to excessive culling by hunting estates
- **no legal limit will be applied to control on urban-living species because of their thriving status and the range of negative impacts colonies are having in urban areas**
- **research/study of urban species will continue “in parallel” to the new policy**

BCC believes that the position as stated in the Draft opinion, without including this information, will be misleading to any reader who does not have the full facts available to them.

BCC regards each of the above three facts regarding the England policy and the legal basis that underpins the policy as highly relevant and material to the issues in Ireland. BCC also regards the long-standing and unaltered (compared to the 2020 English policy) General Licencing regimes in Scotland, Wales and Northern Ireland as highly relevant to the situation in Ireland. Does Dr Browne agree?

Furthermore, the new English policy reflects the expert advice of Peter Rock in CC 3 regarding separation of rural- and urban-living species for policy and research purposes.

It is apparent to BCC that NPWS has sought, and continues to seek to continue to conflate rural- and urban-living species numbers for policy purposes and ignore the explosion of the urban populations here since the recording of just 209 urban-

breeding pairs in Ireland in 2002 (Seabird 200 figures) – without any attempt to comply with 2.2 as quoted in the opinion.

BCC asks the following question of Dr. Browne – is the Dept./NPWS legally correct in conflating urban seagull populations (of unknown quantities other than 209 pairs recorded in seabird 2000) with seagull populations living in protected natural habitat areas, while at the same time not meeting any of the legal requirements that he set out at 2.2 in his opinion– irrespective of the known severe negative impacts of urban seagull colonies on communities, state-wide? And if his opinion is that the Dept. is on a sound legal footing on all related matters – including subordination of peoples’ interests (public health and safety) rights, will he set out his legal rationale?

17 In section 5, the legal document addresses questions posed by members of the CC. Before proceeding ad seriatim, BCC makes a general point that neither the questions nor the replies have been ranked in terms of relative importance or issue priority – such as would likely be required in making any determinations on actions and/or priorities.

BCC regards the fact that DCHG/NPWS has been issuing State-wide Declarations (all species) for many years using a decision threshold that is materially higher than the legal threshold as a matter of grave importance compared to say the concerns expressed about alternative solutions that have in fact been demonstrated to be futile and a waste of time and money. Does Dr Browne agree with our relative legal priority assessment?

Question 1 (opposite)

5.2 Does the legal obligation on the State set out in 2.2 of the opinion apply to urban areas not qualified and listed on the EU Register of SAC’s and SCI’s and urban-living seagull populations, and are “the interests of public health and safety” legally subordinate to 2.2?

The total count of urban herring gull pairs nesting in the Republic was 209 pairs in 2002 (Seabird 2000); the RO’D drone/camera study in 2018 in small areas of Balbriggan, Howth and Skerries showed 451 nests.

1. Examine if the inclusion of the gull species in the specific location in the State Wild Declaration conforms with the provisions of the Birds Directive given the significant decline in the Herring Gull population since the Birds Directive came into force.

The most recent new national policies (England 2020, The Netherlands) deliberately do not conflate urban numbers with numbers in natural habitats – because they have concluded based on the evidence that urban populations do not will not revert to natural habitats.

The Habitats Directive concerns itself with ‘natural range’, ‘Special Areas of Conservation’ and ‘Sites of Community Concern’ and ‘area of distribution’ – it does not mention “urban habitat” nor is any urban habitat described or listed in the Sites of Community Importance lists.

Is BCC’s understanding correct viz. that there is a legal obligation that species numbers need to be adapted – either upwards or downwards - to comply with all six of the stated criteria for species management in 2.2 above?

If BCC’s understanding is correct regarding a legal requirement to adapt populations upwards or downwards to comply with what is quoted at 2.2., and if there is a ‘downward’ requirement – would the legal provisions for the protection of public health and safety acknowledged in the Habitats Directive have an overriding priority under that Directive’s provisions that include social and economic factors?

5.3 In reply to Question 9 at 5.53 the opinion states that ***“ultimately it is a question for the Minister to determine whether the threshold has been met”***. Is the opinion expressed here in reply to question 1 rowing back from the earlier expressed view that it is for the Minister to determine whether a threshold has been met, especially given the saver on public health and safety in the Wildlife 2000 Act?

At 3.12 the opinion states that “It does not appear to me from looking at the face of the Declaration that there is any evidence that the Minister has excluded the possibility that there may be an alternative satisfactory solution (although I should say that I have only looked at the Declaration which is publicly available and not any of the background materials).”

Question 1

5.2. While there is a general obligation in Article 2 of the Bird Directive which requires Member States shall take the requisite measures to maintain the population of the species 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, there is a derogation provision in Article 9 of the Directive. That derogation provision must be construed narrowly and in strict accordance with the criteria therein.

5.3. In my view, there must be a significant doubt that the derogation regime in the 1986 Regulations, which were made pursuant to the Act, conforms with Article 9 of the Birds Directive, in the absence of an express and systematic requirement to demonstrate that there is no other satisfactory solution for a proposed derogation and where the specific criteria in Article 9(2) are not complied with or not required to be complied with.

5.4. Given that reg.55 of the 2011 Regulations transposes Article 9 of the Birds Directive it seems to me that this is the appropriate procedure to follow when considering a derogation for a wild bird protected under the Birds Directive (which I understand gulls to be).

BCC provided direct testimony to DCHG/NPWS regarding impacts and failed alternative solutions. Balbriggan also collaborated closely with the RO'D camera study. Balbriggan also influenced FCC to bulk issue and post online the detailed leaflet on non-feeding of gulls.

On page 20 above, dealing with sections 3.10 – 3.14, BCC asks whether these concerns relate to drafting and publishing issues with the Declaration or are they inferring that the Minister/Department determined that the Derogation was necessary without weighing evidence?

BCC repeats some core questions viz. in seeking to extract meaning from the opinion –

- i. Is the opinion implying that it was/is illegal for the state to protect public safety because it does not have full national surveillance and a count of urban seagull populations, a count that does not appear to be mandated by the Habitats Directive, the Birds Directive or Natura 2000 for urban locations?
- ii. Counts of rural populations nationally are available to varying degrees, and obviously would not be impacted in any way by control measures taken on urban-living colonies. Does Dr Browne agree or must urban gulls in unprotected habitats nationally be counted and subjected to the requirements of 2.2. before legal protections of public health and safety may be implemented – especially considering the Wildlife 2000 Act saver?
- iii. Is the opinion implying that the protection of the interests of public health and safety is subordinate to the conservation status and/or measurement thereof of urban seagull colonies that demonstrably did not exist in 2002 and do not appear to be covered in any way in the Habitats Directive, especially given the Wildlife 2000 Act saver?
- iv. If the Department is failing in its responsibilities ref. 5.1 and 2.2 in relation to species and habitat management, does that therefore legally require or justify continually subjecting communities negatively impacted by urban seagull colonies to actual injury, damage and disease risk as has been the case for several years since landfill closures began (ref. DCHG media statement, July 2015)? Wouldn't such a legal position, if it existed, create an equivalence, indeed a prioritisation of the legal rights of seagulls with/over humans' legal

2. Are local authorities or other state agencies legally required to address the issues caused by Gulls on private property and if so, what legislation/laws apply?
3. What are the legal implications of state agencies undertaking Gull control measures on private property, particularly in terms of public and employers liability?
4. What is the homeowners legal responsibility to deal with issues caused by Gulls at or on his/her home? (I am not entirely sure what laws apply here.....constitution, occupiers liability act, health acts etc?)
5. Can a homeowner legally refuse to undertake any Gull control measures as requested by a local community group or state agency?
6. Can local authorities take homeowners to court over feeding gulls under the waste management Act?

rights? BCC regards such as a preposterous and illegal proposition, Does Dr Browne agree?

- v. As there is ample evidence that urban seagulls are already causing actual and serious injury, harm, and serious damage nationally, BCC asks for a legal opinion - aren't the circumstances and scale already gone well beyond an reasonable assessment of "conditions of risk" – i.e. damage or harm that may possibly occur in the future - required by the Birds Directive, especially as the threshold that is legally meant to be applied is "in the interests of public health and safety" rather than the threshold that is being applied by NPWS viz. "represent a threat to public health and safety"?

BCC's very much doubts that the ECJ would prosecute the State for protecting the health and safety of its citizens, and we note that there is been no such ECJ case law under the Directive over forty years.

If the State is remiss in its responsibilities in relation to urban gull populations (ref 2.2 of the initial opinion), does Dr Browne consider that the State may be liable to be prosecuted in the ECJ for its failings or must citizens or organisations take a legal case?

Questions 2 - 6(opposite)

The reply from 5.5 through 5.12 appears to address the provisions in the Regulations concerning the Birds Directive.

BCC believes that Local Authorities and the HSE have relevant statutory obligations to protect public health and safety e.g. in sanitary issues of pest control, food hygiene/safety and waste management – with HSE Environmental Health Officers in fact working very closely with the Local Authorities.

Local Authorities have already fined and prosecuted citizens for offences related to the feeding of pigeons and seagulls viz.

- <https://www.independent.ie/irish-news/its-like-fining-mary-poppins-pensioner-fined-150-for-feeding-seagulls-38934703.html>
- <https://www.independent.ie/irish-news/news/dublin-pensioners-told-they-may-be-fined-if-they-feed-the-birds-near-their-home-30995259.html>

Did Dr Browne consider the above legal precedents in making his opinion in reply to these questions?

Dublin City Council had a major debate on this issue in July 2017 – see here and watch the video from 2hrs 48minutes on- the debate runs for just over half an hour
<https://drive.google.com/file/d/1t7Eq8UBdSbRZJDD6N3dXs3wL4b3f8HRR/view?usp=sharing>

Dublin City has a population of over 1 million people – a ‘significant cohort’ in a public health and safety context.

It is abundantly clear from precedents across the UK and Northern Europe that Local/Municipal Authorities must have a role in the urban seagull issue, and that they operate a system of fines and prosecutions in these regards, including in relation to feeding urban seagulls.

The former FCC Director of Services accepted that Local Authorities have such a role, approved the RO’D camera/drone study in 2018 (Balbriggan, Howth, Skerries), and approved the issue of 9,000 Public Leaflets on urban seagull issues and food waste management throughout Balbriggan. He was correct when he said **in 2016** that this is a national policy issue and would require resources to be addressed– at which point FCC would consider getting involved in solutions.

Question 7 - (opposite)

Once again, this question seems to imply that the interests of public health and safety are subordinate to the interests of urban seagull colonies – colonies that did not exist in Ireland in 2002 (Seabird 2000). If that is the implication, why is it not stated explicitly?

7. Would a city wide or country wide gull control program be legal under the EU Birds Directive if the national population numbers of Herring Gull and Blackbacked gulls are not known?

BCC asks Dr Browne whether it also overlooks the fact that it is a matter for the Minister to make such legal determinations as he acknowledges in his opinion, and as clearly provided for in the Wildlife 2000 Act saver on public health and safety?

BCC poses a counter question – If a control action were taken in the interests of public health and safety what charge would/could be made against the State under the Birds Directive – noting that there are no ECJ cases concerning public health and safety based control actions in all member states over the past forty years?

For the record, BCC would have no qualms whatsoever were the State to be prosecuted by the EU Commission for failing to meet its legal obligations under the Birds Directive.

To be clear once again, BCC agrees with the argument that research into urban seagulls is warranted – we do not agree, and will never agree that communities being hugely negatively impacted by expanding urban colonies must continue to be denied protection of their public health and safety by the State while the State refuses to conduct any such essential research, or during the conduct of such research as may be eventually undertaken.

In BCC's view, reading the legislation and observing the many precedents across the UK and EU, there is no legal obstacle to stop the State emulating the Dutch approach (2016) which sees research done in parallel with control measures in the interests of public health and safety, and/or the new English policy which also sees research of urban seagulls being undertaken in parallel with control actions in impacted communities. Does Dr Browne agree?

Question 8 - (opposite), plus the opinion in reply 5.31

In BCC's view, the reply to this question does not make sense considering the risks to people and the Dept. /NPWS' 6-8 week processing time for every individual application for a licence, and the reply therefore seems to ignore the nub of the question.

8. Should people who are impacted by constant sleep disruption from constant environmental (seagull) noise be advised to ask their GP to certify them as being unfit for work? Or should they be permitted to remove the cause of the noise/impairment – the seagull nest(s)?

Question 8

5.31. In relation to question 8, an individual should only remove the seagull nest if permitted to do so under licence or derogation. The question of whether people who are impacted by constant sleep disruption from constant environmental (seagull) noise should ask their GP to certify them as being unfit for work is really a matter for their employer/employment contract.

In the absence of a general derogation for removal of seagull nests, such as currently only exists in parts of Balbriggan, DCHG/NPWS has previously stated that it takes 6-8 weeks for it to process an application for a licence. Seagull noise during breeding season is intense, and occurs at all times during the 24 hour day cycle. In PQ responses, DCHG/NPWS said in 2016 that “it does its best within existing resources”. In BCC’s view, this is not an acceptable or legally defensible position when legitimate interests of public health and safety are at stake. Does Dr. Browne agree?

The opinion seems to be saying that an individual in a location not covered by a derogation who is exposed to constant sleep disruption must put up with that for as long as it takes for NPWS to process/grant a licence, and negotiate an arrangement with their employer for the duration if constant sleep deprivation renders them unfit/unsafe to work?

Is BCC understanding the opinion correctly – because if we are, we believe that it is subordinating serious public health and safety considerations to the interests of seagulls and the vagaries of Departmental resources and other priorities? BCC asks Dr Browne are we understanding his opinion correctly?

At 5:38 in response to Question 10, the opinion seems to agree that noise and sleep disturbance to an extent that could contribute to or cause an accident may be grounds for a derogation under the public health and safety provision in Article 9 of the Directive.

NPWS has previously acknowledged that it takes 6-8 weeks to process a licence application, therefore the only practical; means of protecting the interests of public health and safety in the noise/sleep disturbance context, especially where high-density colonies have established is a general derogation permitting control measures - at least for the removal of nests. If NPWS does not now proceed on this basis it is knowingly permitting a harmful and dangerous situation to persist in impacted communities.

BCC’s view is that the serious and evidence-shown negative impacts of sleep-deprivation are such that a General Licence such as has been routinely available in the UK for many years is the correct licencing model for the domestic situation and for hospitals.

9. Should people impacted by constant noise from gull colonies continue to be compelled – as is the status quo due to DCHG policy – to live with it and accept it? What is the legal position of DCHG who have the statutory responsibility, the necessary legislative provisions to act “in the interests of public health and safety”, and who are very well aware of the noise problem, and of its impacts on entire communities of people around the country, and of the fact that Ireland is behind the rest of its EU (and UK) neighbours in protecting citizens?

While England has withdrawn their General Licence in 2020, they have rescheduled their Licencing service to commence on 1st February – two months before nesting normally starts, and have given a commitment on service levels, and it is clear from their published policy that “no limits will be applied to nest/egg removal” in urban areas on grounds of public health and safety.

BCC asks Dr Browne if the national scale of the urban seagull problem and/or the Department’s resource constraints are such that it may take weeks or months (even beyond the active duration of nest sites) means that people may not receive derogations in circumstances for which derogations are fully justified – that such people are legally compelled to accept and live with the “conditions of risk”?

Question 9 - (opposite)

As with question 8 – the opinion seems to be ignoring the nub of the question

- Environmental noise and protracted sleep deprivation are objectively recognised by the medical profession as seriously harmful to the health of sufferers (WHO/EU Commission – refer to official EU Commission papers provided by MEP Clare Daly, and create wider health and safety risks e.g. on the roads (RSA - 20% of accidents due to driver fatigue, research available) and in the workplace (Professor Niall Moyna, DCU – RTE Awake programme, impact of sleep loss on human performance) – all were provided for Dr Browne
- DCHG/NPWS has previously issued individual licences on public health and safety grounds due to noise from nesting seagulls – PQ responses provided. Is the opinion stating that every seagull nest or colony site must be visited and measured for its noise output before a licence can be issued?
- UK Gull expert Peter Rock told CC 3 that in his experience ‘noise’ is the “number 1 complaint” about urban seagull colonies across the UK
- RO’D camera/drone survey in 2018 showed high density colonies - 451 nests in a small number urban residential estates in Balbriggan, Skerries and Howth – compared to 209 urban nests nationally in 2002 (seabird 2000)

Question 9

5.32. Question 9 is somewhat of a rhetorical question and / or a question of policy.

5.33. In terms of the Birds Directive, there is a derogation option in the interests of public health and safety. I am not aware of any specific authority where this particular phrase has been interpreted to mean that one has to demonstrate an impact on both public health and safety or public health only.

5.34. It is also not clear from the Directive whether the impact on public health and safety may be temporary or must be extended over a period of time and how profound the impact must be. Presumably the reference to public means there must be an impact on a significant cohort of people.

5.35. While ultimately it is a question for the Minister to determine whether the threshold has been met, I note that in the documentary materials there is evidence of antimicrobial resistance (“AMR”) and zoonosis which may meet the threshold required in Article 9 of the Birds Directive.

- It is generally accepted that gull colony/nest sites are intensely active for up to five months (April to August), and severe noise can start as early as 2:30am and continue all day and night.

BCC asks whether or not Dr Browne considered the material listed at all of the above bulleted points in reaching his reply to the question?

BCC does not understand why the reply to question 9 dealing with noise has a reference to the AMR/Zoonosis issue at 5.35. Can Dr. Browne explain please?

However, 5.34 and 5.35 of the opinion then appears to accept that the Directive is non-specific as to duration and/or extent of public health and safety impacts, and that it is a matter for the Minister to determine whether the threshold has been met. BCC reminds again that Minister Humphreys made such a legal determination in February 2017 in the case of Balbriggan.

BCC strongly believes that all impacted communities deserve and are entitled to protection as Irish citizens, and on equality basis with millions of European citizens and asks Does Br Browne agree with our legally-entitled EU equality assertion?

BCC asks Dr Browne why, in addition to the noise issue, should any Irish family, school or hospital be compelled to accept gulls nesting when the species has been shown to inflict serious injury and is implicated in the dispersal of AMR – when every other EU jurisdiction is protecting citizens from these circumstances and have been for very many years?

Question 10- (opposite)

- Noise and sleep disturbance over several months, along with attack and injury, and serious damage are the most common issues arising from urban seagull colonies

10. Looking at these media reports, it would seem that a person who is tired and continues to drive/work is the one who is legally liable, yet the state/DCHG will prosecute them if they take a reasonable action (remove nest(s) to eliminate the cause of their tiredness), and they must self-exclude from doing their job if it involves driving/heavy machinery:

Question 10

5.36. Question 10 relates to separate two separate issues: the prospect of being charged for careless or dangerous driving under the Roads Acts and the question of whether the lack of sleep is caused by gull activity which can be curtailed under the Birds Directive.

5.37. I do not propose to deal with any specific defences under the Road Traffic Acts as the question is somewhat general in nature nor is it necessary to comment on the specific facts in the media articles.

5.38. If there is objective evidence that gull activity is having a detrimental effect on people's sleep patterns such as to potentially cause endangerment on public roads, this may well support an argument for a derogation under the public health and safety derogation in Article 9 of the Birds Directive (subject to there being no reasonable alternative).

- DCHG/NPWS have already issued individual case licences for each of these issues/circumstances for many years which means they have already assessed the noise impact of seagulls and made determinations to grant licences;
- In addition to widespread testimony from communities impacted by gull noise, and expert advice to CC 3 from UK gull expert Peter Rock that in his opinion noise was the number one issue across the UK, BCC provided the latest official evidence-based papers (impact on health and wellbeing) on the environmental noise issue from the WHO/EU Commission
- is the opinion suggesting that noise gull noise must be measured and assessed at every one of thousands of urban nest sites when there is an abundance of evidence and research on the noise issue already?
- The 'no reasonable alternative' issue has already been address with evidence and with expert advice and with the precedents in all neighbouring jurisdictions, and by the legal determination made by the Minister in February 2017
- DCHG/NPWS have dragged this issue out now for four and a half years – demonstrating an inexcusable disregard for the “interests of public health and safety” of many communities impacted by this issue
- protection of public health and safety is a duty of the State to its citizens, with overriding priority- refer to repeated recent Government statements on this
- BCC welcomes the recognition in the opinion that proven noise issues “may well support an argument for a derogation under the public health and safety derogation (provisions) in Article 9 of the Birds Directive.

In terms of what might be deemed a reasonable passage of time for addressing a public health and safety issue, and considering the concept of negligence of and non-compliance with a statutory, legal obligation, and when the interests of public health and safety of a large cohort of people, and considering the provenance of the urban seagull issue since 2016, can Dr Browne give a legal opinion as to whether the Dept./NPWS is satisfactorily meeting its statutory obligations to citizens and to seagull species and habitat management?

Question 11- (opposite above)

11. Is it not in fact the case that the Birds Directive sought/seeks to prevent abuse of the health and safety provision as a mechanism to just get rid of inconvenient birds, but it never anticipated the major issues that are arising from urban gull colonies – that in fact 'public health and safety' is an "overriding" public policy with unchallenged primacy?

Reply given Dr Browne stated that “he would need further clarification to address this”.

The Birds Directive is the oldest piece of environmental legislation in the EU dating back to 1979, codified in 2009. The following was published in 2019, signed by former Commissioner Karmenu Vella.

<https://ec.europa.eu/environment/nature/conservation/wildbirds/40%20yrs%20Birds%20Brochure%20WEB.pdf> Note in the Introduction opposite – The History behind the **Birds Directive** the texts:

“Reports of the large-scale loss of wetlands and other major habitats through agricultural industrialisation, deforestation, unchecked development and urban sprawl and a massive drop of bird numbers due to pollution, persecution, harmful pesticides such as DDT brought into sharp focus the need for action...”

“The Directive also brought a new dimension to wildlife conservation, based on the protection and management of habitats as well as species.”

BCC has no doubt that the above description of the motivation for the Birds Directive is an accurate distillation of the circumstances and drivers that brought about the Birds Directive in 1979 and the Habitats Directive in 1992, and indeed the consolidation network that is Natura 2000, links in that order as follows:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0147>
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31992L0043&from=EN>
https://ec.europa.eu/environment/nature/natura2000/index_en.htm

None of the three texts (Habitats Directive, Birds Directive or Natura 2000) refers to “urban habitat” in any way shape or form on the contrary, they all refer to clearly identified “natural habitats” – see the summary from Natura 2000 opposite/below and note the maintenance of “Sites of Community Importance (SCIs) across members states as the means “to ensure that any new sites proposed by member states have legal status” .

BCC can find no “urban sites” listed on the SCIs website – therefore we ask Dr Browne will he give an opinion with rationale as to what legal status, if any, do “urban sites” have?

Article 1 of the Birds Directive states that “the Directive applies to **“birds, their eggs, nests and habitats.”** The only references in the Habitats Directive, the Birds Directive and Natura 2000 are to “natural habitats”. Urban settings are clearly not a “natural habitat” –

The history behind the Birds Directive

Adopted 40 years ago, in 1979, the EU Birds Directive was a truly ground-breaking piece of legislation. It came at a time when international conservation initiatives were still very much in their infancy. The first World Summit on the Human Environment had been held just a few years before in 1972 and the only international nature convention – the Ramsar Convention on the conservation of wetlands – had just come into force in 1975.

The Birds Directive was also one of the first environmental laws to be adopted at European level despite the Community's then limited powers in the environmental field. Because birds migrate and don't recognise national borders, the then nine EU Member States knew they would be much stronger and more effective if they worked together. And so, the Birds Directive came into being, galvanised by a strong public outcry over the dramatic decline in bird life.

Reports of the large-scale loss of wetlands and other major habitats through agricultural industrialisation, deforestation, unchecked development and urban sprawl combined with the massive drop in bird numbers due to pollution, persecution, harmful pesticides such as DDT, brought into sharp focus the need for urgent action.

The Directive also brought a new dimension to wildlife conservation, based on the protection and management of habitats as well as species. Until then most initiatives tended to focus on the conservation of a few iconic species. Yet, it was becoming increasingly evident that, in order to save a species, one also had to conserve its habitat.

(3) In relation to a European Site that hosts a priority natural habitat type or priority species, the only imperative reasons of overriding public interest that may be considered are those relating to—

- (a) human health,
- (b) public safety,
- (c) beneficial consequences of primary importance to the environment, or
- (d) subject to *paragraph (5)*, and having obtained an opinion from the European Commission, other imperative reasons of overriding public interest.

(4) In relation to a European Site that does not host a priority natural habitat type or priority species, the imperative reasons of overriding public interest may also include those of a social or economic nature.

particularly for seabirds. Therefore, Article 1 seems not to apply to urban locations as they are not listed in SACs/SCIs and Natura 2000 states that 'listing' of SCIs in the EU Register is the means by which legal status is given to any specified natural habitat.

Article 4 of the Habitats Directive states "Article 4 1. On the basis of the criteria set out in Annex III (Stage 1) and relevant scientific information. Each Member **State shall propose a list of sites** indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host. For animal species ranging over wide areas these sites shall correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction.

BCC takes particular note of this provision:

For aquatic species which range over wide areas, such sites will be proposed only where there is a clearly identifiable area representing the physical and biological factors essential to their life and reproduction.

BCC asks Br Browne does this provision, along with the requirement for SACs and SCIs to be qualified and listed in the EU Register of such sites not clearly exclude urban locations from the protections in the Habitats Directive?

As far as BCC is aware no such urban sites have been proposed, accepted or listed under the Habitats Directive for protection for aquatic species, never mind and "clearly identified area representing the physical and biological factors essential to their life and reproduction".

Will Dr Browne give a legal opinion of the wider implications – e.g. if 2.2 in his initial opinion does not apply if in fact urban areas do not constitute legally 'protected habitats'?

Extract from Natura 2000

Natura 2000 sites designation In a nutshell

Natura 2000 is a network of sites selected to ensure the long-term survival of Europe's most valuable and threatened species and habitats. How a site is chosen depends on what it aims to protect.

In practice

The Natura 2000 network stems from the Habitats Directive. Member States choose sites according to precise, scientific criteria, but the selection procedure varies depending on which of the two nature directives – Birds or Habitats – warrants the creation of a particular site.

Under the Habitats Directive (Art. 3 and 4), Member States designate Special Areas of Conservation (SACs) to ensure the favourable conservation status of each habitat type and species throughout their range in the EU. Under the Birds Directive (Art. 4), the network must include Special Protection Areas (SPAs) designated for 194 particularly threatened species and all migratory bird species.

Under the Birds Directive

Member States designate Special Protection Areas (SPAs) according to scientific criteria such as '1% of the population of listed vulnerable species' or 'wetlands of international importance for migratory waterfowl'. While Member States may choose the most appropriate criteria, they must ensure that all the 'most suitable territories', both in number and surface area, are designated. Site specific data are transmitted to the Commission using Standard Data Forms.

Based on the information provided by the Member States, the European Commission determines if the designated sites are sufficient to form a coherent network for the protection of these vulnerable and migratory species. These sites then become an integral part of the Natura 2000 network.

Under the Habitats Directive

The choice of sites is based on scientific criteria specified in the directive, to ensure that the natural habitat types listed in the directive's Annex I and the habitats of the species listed in its Annex II are maintained or, where appropriate, restored to a favourable conservation status in their natural range.

Member States first carry out comprehensive assessments of each of the habitat types and species present on their territory. They then submit lists of proposed Sites of Community Importance (pSCIs). Site specific data are transmitted to the Commission using Standard Data Forms and must include information such as the size and location of the site as well as the types of species and/or habitat found on this site and warranting its selection.

Based on the proposals provided by the Member States, scientific seminars are convened for each biogeographical region. With the support of the European Environment Agency, these expert biogeographical seminars aim to determine whether sufficient high-quality sites have been proposed by each Member State.

Once the lists of Sites of Community Importance (SCIs) have been adopted, Member States must designate them as Special Areas of Conservation (SACs), as soon as possible and within six years at most. They should give priority to those sites that are most threatened and/or most important for conservation and take the necessary management or restoration measures to ensure the favourable conservation status of sites during this period.

The Commission updates the Union SCI Lists every year to ensure that any new sites proposed by Member States have a legal status

“Where appropriate , Member States shall propose adaptation of the list in the light of the results of the surveillance referred to in Article 11 .”

Once again, none of the legislation mentions “urban habitat” – meaning none have been “proposed”. Also, the legislation refers to “natural habitat” sites, and lists of such sites that give them legal effect. Roofs of homes, schools and hospitals e.g. are clearly not “natural habitat” sites, and are clearly not essential physical or biological factors essential to their (gulls) life and reproduction. They are clearly optional and opportunistic sites for seagulls for as long as they are not managed in accordance with the following mandatory provision in Article 2 of the Birds Directive – as quoted in 2.2. of the legal opinion opposite

“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.”

BCC asks Dr Browne, if urban locations are not protected habitats under the Birds Directive, have never been proposed as such, and if the specific requirements criteria as set out above for **“aquatic species” in purple text above** have not been proposed or met in any way by the State, and if none of the six criteria mandated in 2.2 towards adaptation of populations are being met – which they clearly aren’t in our view, and in the proven and accepted circumstances where unmanaged high-density urban seagull colonies are proliferating freely and causing huge negative impacts in communities – **what if any legal justification has the Dept./NPWS for refusing to date and continuing to refuse to protect “the interests of public health and safety” of Irish citizens in line with protections given to our EU counterparts?**

Article 11 of the Habitats Directive states: 11. Member States shall undertake surveillance of the conservation status of the natural habitats and species referred to in Article 2 with particular regard to priority natural habitat types and priority species. The article does mandate or even mention surveillance of the conservation status of urban habits and any species, priority or otherwise – therefore BCC asks do the legally mandated requirements set out at 2.2 in the opinion apply to species in urban locations that are clearly not natural

2.2. Member States must take the requisite measures to maintain the population of bird species 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

habitats for aquatic species like urban seagulls, and have clearly not been proposed to the EU by the State for protection under the Habitats Directive or Natura 2000?

Article 12 of the Habitats Directive States Article 12 1. Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV (a) in their natural range – as is qualified and linked above (**purple text**) to sites proposed to the EU by member states (SACs and SCIs) and accepted and registered as such by the EU (Natura 2000).

The Annexes of the Habitats Directive are very specific descriptions of species of flora and fauna and their natural habitats. There is no reference whatsoever to “urban” habitats or sites of any kind.

However, both Directives are explicit regarding protection of the interests of public health and safety. Provision is actually made for incursion/development of/onto SACs subject to appropriate planning and impact assessment. The 2011 Irish regulations are quoted opposite above.

In CC meeting 4 it was stated that “nobody anticipated what is happening now with urban gulls when the Directive was originally framed in 1979.” This is clearly a true and correct statement. In 2002 there were just 209 urban nesting pairs of herring gulls in the Republic.

As has been conclusively demonstrated, Ireland remains alone among all neighbouring European jurisdictions in refusing to recognise the urban seagull problem and in refusing to protect the interests of public health and safety of its citizens in communities impacted by urban seagull colonies – with the partial exception of the Balbriggan derogation.

Question 11, therefore, probes and asks whether or not the Irish State, intentionally or otherwise, has been ignoring and is continuing to ignore and therefore is denying the intentions of and the spirit of the provisions in the Habitats and Birds Directives that were clearly designed to protect natural habitats and species, and also the interests of public health and safety in the face of an increasingly urgent and serious urban seagull problem.

BCC asks Dr Browne will he consider the above material and our repeat of question 11 in that overall context.

Questions 12 to 15 – in relation to the Birds Directive

BCC makes an overarching comment that we believe that neither national law nor EU law in intends or requires Irish citizens to be compelled by the our government to live in and with the uncivilised and dangerous conditions (including attack, injury, disease risk, protracted intolerable noise, exposure to AMR contamination and extensive faecal contamination of our homes, schools and hospitals) that is being caused by unmanaged urban seagull colonies. Yet that is the situation that has come about and persists in many communities over the past several years. Dept./NPWS claimed in 2016 that its 2018 Review would address these issues, and then created another two year delay via its consultative committee, and then refused to implement the Recommendation in the CC’s First Interim Report at section 8 that said licences should be given to other impacted areas. In all, we see a five year and counting delay in the provision of legal protections to impacted communities. This is a disgraceful situation perpetrated by DCHG/NPWS.

In relation to question 15, it refers incorrectly to “the new UK licencing system” – it is England that has introduced a new system – Northern Ireland, Scotland and Wales retain unaltered their long-standing General Licences.

BCC has neither suggested nor discounted the new licencing system for England and would like this to be corrected in the opinion document. We acknowledged eight principles underpinning the new England policy and regard those principles as valid and highly relevant to the situation in Ireland.

BCC researched and provided NPWS and the CC with the new English system because it has been devised to address the urban seagull problem, it attributes overriding priority to the protection of public health and safety and life, it recognises the need to separate rural- and urban living gulls for both conservation and for control purposes, it sets no limits on the control of urban gull species, and it commits to research in parallel with its urban controls on the species – a legal policy position also taken in the second-most recently developed

Category - Birds Directive

12. Is Article 9 of the Birds Directive correctly transposed into Irish law? (Why does the DCHG always refer to an old SI when issuing State declarations).
13. Is Irish implementation of Article 9 (in whole) in line with all articles of the Birds Directive?
14. It is our view that Article 9 does not allow for blanket derogations such as those issued by the State, what is the view of Mr Brown, and does he refer to jurisprudence?
15. Is the suggested new UK licensing system in compliance with Article 9 of the Birds Directive?

Dr. Browne’s covering remarks were:

- 5.51. Questions 16 to 18 do not appear to be directly relevant to the Birds Directive and concern issues of liability under the Road Traffic Acts.
16. What is the legal liability position if the person drives a Public Service Vehicle (or a family car, or a Heavy Goods Vehicle) and they are culpable in an accident due to driver fatigue in which several people may be injured or killed?
 17. If a person works using heavy machinery in their job and causes an injurious or fatal accident to him/herself or to a colleague or colleagues that is attributable to a lapse in concentration caused by tiredness/fatigue - what is the legal position a) for liability for the accident b) if the employee declares him/herself unfit to work and may be then suspended or dismissed by the employer, and c) if the employee informs his employer of tiredness and the reason for it and is instructed to work on the machine anyway?
 18. What views do insurance companies have on this, and what is their direction of travel in terms of actuarial risk assessment, liability and litigation in tiredness cases? This question is particularly pertinent as recognition of impairment due to tiredness increases.

national policy, i.e. The Netherlands in 2016, under the Birds Directive – which was fully transposed into Dutch Law.

Questions 16 to 18

With regard to Dr Browne’s covering remarks in **red text** opposite, BCC apologises if our meaning/context was unclear. Each of the questions should have been prefixed by the following ***“In cases where thousands of people live in housing estates where high density seagull colonies (such as were shown in the Roughan O’Donovan camera drone study in 2018 – 451 nests in three small areas of Balbriggan, Howth and Skerries) have established for breeding purposes from as early as February every year and until as late as September, and where intense noise occurs every night for months from as early as 2:30am and throughout every day (e.g. affecting shift workers) until after midnight, and such people are majorly sleep-deprived, very tired and highly stressed.....”***

However, BCC has noted the section of the reply at 5.54 (opposite) appears to somewhat accept the basic point i.e. the risk impacts of the conditions described above that are common in housing estates with high density seagull colonies.

BCC refers back to the reply to Question 8 and the reply opposite “an individual should only remove the seagull nest in permitted to do so under licence or derogation”, and also to Question 10 and its reply at 5.38. NPWS acknowledges that it takes 6-8 weeks to process a licence application and it does not publish the State-wide Declaration until 1st May after nesting/laying has commenced (in late April).

The opinion seems to be stating that any persons so affected, **unless living in a location where a derogation applies**, must live with the severe noise issue (and the now acknowledged risks of sleep deprivation and accidents due to tiredness) for the 6-8 weeks application processing time from which a licence will be too late anyway, unless there is a derogation which obviates the need to apply for a licence.

BCC asks Dr Browne is our understanding of the opinion in this regard correct – i.e. that a family for example, with say young children or immune-compromised members, and one or

5.54. If an accident is caused directly due to the impact of a gull or because of sleep deprivation, that may constitute grounds of a defence that the causal factor was due to circumstances beyond the driver’s control. However, again the specific issues could only be properly addressed in a practical scenario.

8. Should people who are impacted by constant sleep disruption from constant environmental (seagull) noise be advised to ask their GP to certify them as being unfit for work? Or should they be permitted to remove the cause of the noise/impairment – the seagull nest(s)?

Question 8

5.31. In relation to question 8, an individual should only remove the seagull nest if permitted to do so under **licence** or derogation. The question of whether people who are impacted by constant sleep disruption from constant environmental (seagull) noise should ask their GP to certify them as being unfit for work is really a matter for their employer/employment contract.

more seagull nests on their roof, who apply for a licence and are given a 6-8 week lead-time for a Ranger visit, in which time chicks will be hatched and seagull parents will be aggressive and attack the family members, must wait to see if they get a licence to remove nests and chicks before they can take action to protect themselves – bearing in mind human parents’ legal obligations to protect and honour their duty of care to their own children?

Questions 19 (opposite) contains our request for the Attorney General to be consulted on the impacts of urban seagull colonies and several related matters – **and that request stands with added urgency now in the light of several aspects of Dr. Browne’s opinion**

19. BCC requests that an opinion from the Attorney General’s office is also sought regarding the serious negative impacts on entire communities from urban gull colonies, and the degree to which Ireland is out of step with the EU and the UK – the AG’s opinion to also include consideration of a person’s right to own and enjoy safe and comfortable use of their homes, and the State’s duty of care to citizens and their health and safety, in particular to our children in their schools, elderly and immune-compromised citizens being exposed to (documented) physical attack, injury and infection from urban gull colonies – despite the existence of national and EU legislation to mitigate and prevent such attacks without harm to gull species.

***** Ends here**

Balbriggan Community Committee (BCC)

2 Nov 2020

CC Legal Module – document 3 of 4 – perceived gaps in the initial draft legal opinion from Dr Browne based on material submitted for consideration by BCC.

BCC recognises that Dr Browne may regard the matters below as addressed at a higher level in his opinion, however we feel it is necessary to seek clarification.

A) Legal responsibilities of the State/Dept./NPWS in relation to the urban seagull issue?

Paragraph 2.2 of the legal opinion stating legal obligations on EU Member States is of huge importance and BCC has asked a number of follow-up questions in our ad seriatim document attached separately seeking legal opinion on it and its implications as tied into the Habitats Directive and Natura 2000, as referenced and quoted by Br Browne in his opinion.

In BCC's experience, the Dept./NPWS has sought repeatedly since 2016 to shift the responsibility for a public administration response to the urban gull issue respectively onto the Department of the Local Authority, the HSE and the Department of Health – claiming in correspondence with BCC and in PQ responses that the Dept./NPWS “is not a competent authority in matters of public health and safety”. Each of the Ministers in charge of these organisations replied formally that the urban seagull issue is solely the responsibility of the Minister of the Dept./NPWS – at the time the Department of Culture, Heritage and the Gaeltacht, latterly the Department of Housing, Planning and Heritage.

Reading the heads of the 2011 Regulations SI 477 it seems very clear to BCC that the statutory responsibility, authority and therefore resulting policy and operational obligations for implementation of the Wildlife legislation (including achievement of compliance with EU law on behalf of the State) lies with the Minister/Department in charge of that legislation viz DPH/NPWS. While the Regulations allow/anticipate that said Minister may consult as necessary with other Ministers/Public Authorities on concomitant responsibilities and obligations, the Minister (DHPH/NPWS retains statutory authority, full responsibility and the obligations that come with that – notwithstanding any arrangement or agreements that may be sought by the Minister/Dept. and reached across other Depts. and/or public bodies. Does Dr Browne agree?

This is a matter of huge importance given the amount of prevarication and attempted buck passing (on the official record) on the urban seagull issue by the Dept./NPWS since 2016 which has sought to confine its role on the urban seagull issue to being a passive licence issuing authority. This question is hugely germane to 2.2 of the initial Draft opinion that sets out relevant legal obligations on EU Member States.

Therefore, BCC asks what are the up-to-date statutory responsibilities on the Dept./NPWS, under which law(s) (national and/or EU) and Regulations, towards recognising and addressing the urban seagull issue?

B) Noise and its impacts.

BCC asked a number of questions within which noise and its impacts on people's health and safety were of core concern.

The initial draft legal opinion makes three references to noise as follows:

1.6 *Section 7.2 of the FIR made a number of recommendations to carry out a desk-top review of the level of risk, including emerging risks, that urban gulls pose to the general public and to further assess the public health and safety implications of sleep deprivation in humans as a result of noise (including intensity and duration) from gulls, in the context of wildlife in general.*

5.26. *In principle, a local authority could bring a prosecution if unauthorised disposal of waste caused or is likely to cause environmental pollution. This is defined in s.5 of the Act as follows:*

“environmental pollution” means, in relation to waste, the holding, transport, recovery or disposal of waste in a manner which would endanger human health or harm the environment, and in particular— (a) create a risk to waters, the atmosphere, land, soil, plants or animals, (b) create a nuisance through noise, odours or litter, or (c) adversely affect the countryside or places of special interest”

5.27. *In my view, this is directed more at unlawful pollution of the environment more generally caused by the unlawful recovery or treatment of waste as opposed to directly feeding a gull with waste. However, if a feeding habitat of gulls was polluted as a result of unauthorised waste activity, this could potentially give rise to a breach of the 1996 Act which is capable of being prosecuted.*

In reply to Question 8 viz: 8. Should people who are impacted by constant sleep disruption from constant environmental (seagull) noise be advised to ask their GP to certify them as being unfit for work? Or should they be permitted to remove the cause of the noise/impairment – the seagull nest(s)?

5.31. *In relation to question 8, an individual should only remove the seagull nest if permitted to do so under licence or derogation. The question of whether people who are impacted by constant sleep disruption from constant environmental (seagull) noise should ask their GP to certify them as being unfit for work is really a matter for their employer/employment contract.*

Dr. Browne seems to have some issues with questions 9, 10 and 11 – the way they were put, which collectively set out scenarios and questions on the noise issue and its impacts – we have modified the wording of these questions in our separate ad seriatim document (no 2 of 4 documents) that accompanied this document.

BCC doesn't see any ambiguity in our request for a legal opinion in relation to the following part of Question 9 as originally put and perhaps Dr Browne can reconsider it?

What is the legal position of DCHG who have the statutory responsibility, the necessary legislative provisions to act "in the interests of public health and safety", and who are very well aware of the noise problem, and of its impacts on entire communities of people around the country, and of the fact that Ireland is behind the rest of its EU (and UK) neighbours in protecting citizens?

Notwithstanding Dr Browne's apparent issues with questions 8-11, he states at paragraph 5.38 in response to question 10:

5.38. If there is objective evidence that gull activity is having a detrimental effect on people's sleep patterns such as to potentially cause endangerment on public roads, this may well support an argument for a derogation under the public health and safety derogation in Article 9 of the Birds Directive (subject to there being no reasonable alternative).

In the round therefore, on the 'noise' matter, BCC asks the following further questions and that they be considered in light of the correct legal threshold that must be applied in line with the Birds Directive viz. actions based on identified "**conditions of risk**" to be taken "**in the interests of public health and safety**". BCC observes that **risk** is commonly defined and understood to mean "**something bad that may possibly happen in the future**".

BCC asks what does Dr. Browne mean by **objective evidence** in 5.38 and does he consider that the desktop exercise that he referenced in 1.6 of his opinion stating his understanding of the First Interim Report of the CC can satisfy this requirement by reference to existing urban seagull research e.g. across the UK and Northern Europe which has already satisfied the evidential criteria, under the Birds Directive, in relation to noise – especially given that that national scale of the urban seagull problem as already been acknowledged by DHG/NPWS?

Also, if Dr Browne has any concerns about such a desktop exercise being adequate to meet '**objective evidence**' criteria, and has he a view on what would be good legal practice in meeting *objective evidence* criteria in the context of the urban seagull issue and the fact that the Dept./NPWS has already formally acknowledged the national dimension of the urban seagull issue?

BCC's asks whether Dr. Browne considered all of the following factors in reaching his opinion on the noise issue?

- a) the contribution of UK gull expert Peter Rock on the noise issue in CC meeting 4 where he described it as "the number 1 issue across the UK in his experience?", and the fact that the four countries of the UK have operated General Licences for years, and that intense noise from urban seagull colonies is recognised as an actionable issue in several settings e.g. domestic, schools and hospitals?
- b) the fact the Dept./NPWS has itself previously issued licences on public health and safety grounds in which noise was cited by NPWS as the reason for nest removal?
- c) The submitted official WHO/EU electronic documents (provided to BCC by MEP Clare Daly) that deal with environmental noise, that specify the range of serious public health issues with which environmental noise is evidentially linked, and that specify a target for night time noise of 40db – whereas gulls are recorded at up to 115db? Refer to "Development of the WHO Environmental Noise" Guidelines for the European Region:
file:///C:/Users/Acer/Downloads/ijerph-15-00813.pdf

e.g. health issues from the Abstract: ..."**Compared to previous WHO guidelines on noise, the most significant developments include: consideration of new evidence associating environmental noise exposure with health outcomes, such as annoyance, cardiovascular effects, obesity and metabolic effects (such as diabetes), cognitive impairment, sleep disturbance, hearing impairment and tinnitus, adverse birth outcomes, quality of life, mental health, and wellbeing; inclusion of new noise sources to reflect the current noise environment;**"
- d) the RTE Awake programme MP3 extract provided by BCC – i.e. the material presented by Professor Dr Niall Moyna (DCU - on sleep issues including deprivation and their impact on health and human performance, including in the workplace. This programme addressed many of the health issues that are also listed in the WHO/EU documents above that are linked to sleep disturbance. See also <https://presspack.rte.ie/2017/11/22/awake-the-science-of-sleep-new/>
- e) the provided material on the Road Safety Authority's campaign on sleep and driving including their national Tiredness Kills campaign – which is currently being rerun on national media – and that included the Authorities objective evidence that 20% of road accidents are attributable to driver tiredness?
- f) the Roughan O'Donovan drone/camera exercise in 2018 over small areas of Balbriggan, Howth and Skerries which showed high-density colonies in housing estates, on schools and on businesses – 451 nests compared to a national census total of just 209 urban nests in 2002?

- g) the Balbriggan Community Report, December 2017 in which BCC set out testimonies from several families, and also the public petition held in Balbriggan in 2017 signed by approximately 650 householders across eight housing estates, some of which figured in the Roughan O'Donovan study – and all of which testified to noise and sleep disturbance over several months every summer. Both of these exercises were undertaken to convey the scale and seriousness of this problem – and because DCHG/NPWS declined several written invitations to visit the impacted sites and make their own assessment.

In conclusion on the **noise** issue, BCC is asking for clarification/confirmation as to whether Dr. Browne considered all of the above evidence-based material when reaching the statement he made at 5.38 in his opinion viz.

5.38. If there is objective evidence that gull activity is having a detrimental effect on people's sleep patterns such as to potentially cause endangerment on public roads, this may well support an argument for a derogation under the public health and safety derogation in Article 9 of the Birds Directive (subject to there being no reasonable alternative).

We feel obliged to ask this question because in our view, the opinion seems to be very narrow and somewhat equivocal (**endangerment on public roads**) vs. the verifiable evidence-based and the acknowledged range of serious health implications for people suffering from severe environmental noise and sleep deprivation. We ask Dr Browne did he consider all of the above against the evidence requirement and threshold set in the Birds Directive viz. **conditions of risk** and **in the interests of public health and safety**?

BCC also points out that the noise issue from a high density colony (20-30 nests) occupying a housing estate is not mitigatable by the oft cited alternative solutions of spikes and nets – unless of course total coverage of roof space in a district/region is to be pursued as a satisfactory solution.

In BCC's view, an expedited desktop exercise based on extensive existing research, and legal precedents and practices across the UK and Northern Europe should be more than adequate to confirm the need to derogate in urban areas where communities are impacted by the noise problem. Does Dr Browne agree? If not, can he set out his reasons explanations as to what he believes is required as **objective evidence** to satisfy the law?

C) Risk of Antimicrobial Resistance contamination, zoonotic diseases and/or serious injury.

Of just four conclusions made by Dr Browne in section 6 of his opinion, BCC very much welcomes the conclusion made at 6.3 with regard to the Antimicrobial Resistance (AMR and zoonosis) risk

6.3. Article 9 expressly refers to public health and safety as a derogation criterion and would appear in principle to allow for a derogation to address the concerns articulated at the Committee in light of the evidence of AMR and zoonosis as well as more anecdotal evidence.

BCC makes the point that DCHG/NPWS has been aware of the AMR risk since 2015 (McMahon study, Howth, Dublin – previously provided by BCC. Furthermore, BCC provided several more studies through 2016-2018 which verified the AMR risk. BCC also provided DCHG/NPWS and the 2018 review with a copy of the Irish National AMR Plan published jointly by the CMO and the Minister for Health, along with EU-level AMR strategy documents – in which the extremely serious nature of the AMR risk is made abundantly clear. BCC also provided peer-reviewed scientific studies in relation to Campylobacter and Salmonellosis disease risks from gulls.

The term "**in principle**" is used in Dr Browne's recommendation regarding a potential derogation due to the evidence-based AMR and zoonosis risk. Various definitions of "**in principle**" signify

something that has been agreed but the details haven't been worked out, and legal definitions describe something agreed '*in principle*' as 'a stepping stone to a contract'. There is generally no inbuilt inference of priority, urgency or timescale for realisation.

The only realistic opportunity for derogations (published on 1st May every year) in the urban seagull context to have the beneficial impact that is intended is at/around the breeding season – roughly April through mid-June before chicks hatch. Since the issue was first raised in 2016, five breeding seasons have passed, and the preliminaries will start in February 2021. The impact of urban seagulls runs from early April through to September.

After almost five years of seeking protection for impacted communities equal to EU citizens' protection under the Birds Directive, with a peer-reviewed evidence base dating back even further, BCC is much more concerned with real progress '*in practice*' rather than '*in principle*' given the potential deadly seriousness of AMR contamination and the fact that what may be ambient risk in the environment must logically be heightened by the presence of high-density gull colonies in housing estates, on schools, hospitals etc..

BCC again refers to the criteria "*conditions of risk*" and "*in the interests of public health and safety*" that apply in the Birds Directive. All EU citizens have legally equal rights under the treaties and the EU human rights charter. Irish citizens impacted by the urban seagull problem are patently not receiving the same protections as European citizens under the Birds Directive, nor as specified as a 'saver in the interests of public health and safety' in the Wildlife Act 2000 (Amendment), nor as specified in the 2011 Regulations SI 477 "in the interests of public health and safety" – a legal threshold for decisions on whether or not to grant derogations that was adopted in 1985 and has still not been implemented thirty five years later.

On another set of disease risks, gulls are also implicated in dispersal of campylobacter and salmonellosis. The following recent peer review study refers, and there are several others dating back several years as previously provided by BCC: <https://www.nature.com/articles/s41598-019-46326-1>

....GPS recorders. Also, crossing this spatial information with habitat information, we identified critical habitats for the potential transmission of these bacteria in southern Europe. The use of human-made habitats by infected-gulls could potentially increase the potential risk of direct and indirect bidirectional transmission of pathogens between humans and wildlife. Our findings show that pathogen-infected wildlife equipped with GPS recorders can provide accurate information on the spatial spread risk for zoonotic bacteria. Integration of GPS tracking with classical epidemiological approaches may help to improve zoonosis surveillance and control programs.

Previous peer-reviewed studies provided by BCC included proof of salmonellosis infection in humans from seagull faeces (America, Chile, Argentina).

Assoc. Professor McMahon (DCU) and Professor Dearbhaile Morris (NUIG) confirmed that there is negligible testing being done to pin down, track and trace zoonotic infections in humans. Also, there is no legal obligation to test our waterways for AMR.

BCC has spoken to several GPs and they have confirmed that they have no way of knowing how/whence a patient contracts salmonella or campylobacter unless there is a "dense outbreak" in a confined location e.g. from a social function at a particular venue or from a restaurant. Such an infection profile does not apply to picking up illness from one-off contaminations e.g. bad food or accidental wildlife/faecal contamination, and such is seldom likely to be prove-able anyway.

BCC continues to monitor AMR and other disease risks from urban seagulls. The following 2020 Study from the USA of urban birds and AMR and other disease risks refer:

<https://www.sciencedaily.com/releases/2020/07/200713133452.htm>

The weight of science-based evidence, in our view, more than satisfies the “**conditions of risk**” requirement given the seriousness of AMR, and we believe that it is definitely not “**in the interests of public health and safety**” to continue to compel (which is de facto the case in Ireland now for many years) families in their homes, children at school, or people in hospitals, or indeed workers exposed to detritus from wild bird colonies to be exposed to and accept such risks.

In BCC’s view therefore, the criteria/threshold “**conditions of risk**” and “**in the interests of public health and safety**” require an abundance of caution to be taken towards protection of citizens in the AMR and other disease **risk** contexts.

It is also proven that gulls regularly attack and injure people to a degree that requires medical treatment and sometimes hospitalisation.

Therefore, BCC seeks clarification as to whether Dr. Browne’s conclusion at 6.3 incorporates an assessment of the seriousness of the AMR condition of risk as well as the evidence provided in relation to Campylobacter and Salmonellosis.,

Implications of a derogation ‘in the interests of public health and safety’ on the grounds of AMR and zoonosis evidence.

In BCC’s view, the pertinent matters are extremely serious and warrant prompt decisions and actions. Such actions needs to include transparency and publicity e.g. on a par with the Teagasc information campaign aimed at the farming community. BCC points to our recommendations in our minority report to DCHG/NPWS on 20th April, and in particular have concerns in relation to protection of schools (staff and children), and in a wider scope, the legally due protections of any workers who come into contact with or have to clean potentially contaminated nest/colony sites; BCC refers again to the Health and Safety standard in these regards in the UK – previously notified.

With regard to common and well-documented injury of people by aggressive attacks by seagulls. In BCC’s direct knowledge and experience such attacks regularly result in essential medical treatment such as surgical stitches to wounds and antibiotic prescriptions to combat infections. In BCC’s view, “it is clearly not in the interests of public health and safety” to see the circumstances in which such attacks occur being left unaddressed nor indeed being allowed to spread wider and worsen.

BCC asks what are the legal obligations on the state towards protecting citizens in the context of the full set of now acknowledged **conditions of risk** that include AMR, other zoonotic diseases, serious injury and potential infection from urban seagull colonies?

We also ask is it reasonable for the State/Dept./NPWS, considering its statutory obligations ref A) above, to have delayed protection of citizens in full knowledge of the “conditions of risk” for over five years now, and/or to continue such delay past the next imminent opportunity to protect its citizens?

D) Legal precedents and practices in neighbouring jurisdictions dealing with the same urban seagull issues and subject to the Birds Directive

In BCC’s understanding it is common practice in the world of legal matters for legal precedents and practices to be considered when addressing legal issues and related questions – especially when similar circumstances arise, and even more-so when such circumstances exist under one piece of

over-arching law –as in this case, the circumstances and issues surrounding urban seagull colonies and the EU Birds Directive. Is our understanding correct?

It should be noted that BCC has previously provided official documents setting out the legal licencing practices across the four UK countries Northern Ireland, Scotland, England and Wales. Furthermore, BCC correctly documented, tracked and reported the new policy for England on urban seagulls developed since April 2019 – remarks about which seem to be materially incomplete in the opinion – refer to our ad seriatim Document (2 of 4) in this submission.

BCC has provided a plethora of official documentation setting out the range of urban seagull control practices in the interests of public health and safety as carried out by very many councils across the UK since as far back as 2004. BCC provided a comprehensive document on the urban seagull issue published by Edinburgh Council in 2018 which included extensive details of urban gull control measures across the UK back to 2012.

BCC also provided official documents on urban seagull controls from several countries across Northern Europe, e.g. the Dutch urban seagull control programme approved in 2016 by their Supreme Court, and the programme in Calais France undertaken by the Municipal Health Authorities.

The Legal opinion references some very old ECJ cases that relate only to hunting. Apparently there are no such cases going back over forty years in relation to controls for reasons of public health and safety. The opinion makes a scant and partial reference to the new English regime for controlling urban seagulls, and essentially ignores all of the evidence legal precedents and practices.

The Dept./NPWS, based on our experience since 2016, quotes the EU law in PQ responses, in media releases, in correspondence and in the CC, yet a) it refuses to acknowledge the many precedents across the EU regarding urban seagull controls, including in the UK over very many years, and b) the Dept./NPWS appears not to be implementing EU law anyway, and has avoided doing so since it was adopted in Ireland since 1985.

BCC asks, therefore, why the opinion pays such scant attention to legal precedents and practices in all neighbouring jurisdictions given the hard evidence of such that was provided for consideration?

**** ends here



Number 39 of 1976

WILDLIFE ACT 1976

REVISED

Updated to 1 August 2019

This revised Act is an administrative consolidation of the *Wildlife Act 1976*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Judicial Council Act 2019* (33/2019), enacted 23 July 2019, and all statutory instruments up to and including *European Communities (Cites Simplified Procedures) Regulations 2019* (S.I. No. 411 of 2019), made 1 August 2019, were considered in the preparation of this revision.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.



Number 39 of 1976

WILDLIFE ACT 1976

REVISED

Updated to 1 August 2019

Introduction

This revision presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Wildlife Acts 1976 to 2018: this Act is one of a group of Acts included in this collective citation (*Heritage Act 2018*, s. 1(3)). The Acts in the group are:

- *Wildlife Act 1976* (39/1976)
- *Wildlife (Amendment) Act 2000* (38/2000)
- *Wildlife (Amendment) Act 2010* (19/2010)
- *Wildlife (Amendment) Act 2012* (29/2012)
- *Heritage Act 2018* (15/2018), Part 3 (ss. 6-10)

Forestry Acts 1946 to 2009: this Act is one of a group of Acts included in this collective citation (*Forestry (Amendment) Act 2009*, s. 2(2)). The Acts in the group are:

- *Forestry Act 1946* (13/1946)
- *Forestry Act 1956* (6/1956)
- *Wildlife Act 1976* (39/1976), ss. 55 and 63
- *Forestry Act 1988* (26/1988)
- *Forestry (Amendment) Act 2009* (40/2009)

This Act is also to be collectively construed with a number of pieces of related legislation. Included in this group are:

- *European Communities (Natural Habitats) (Amendment) Regulations 2005* (S.I. No. 378 of 2005)
- *European Communities (Birds and Natural Habitats) (Restrictions of the Use of Poison Bait) Regulations 2010* (S.I. 481 of 2010)
- *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. 477 of 2011)
- *European Communities (Birds and Natural Habitats) (Amendment) Regulations 2013* (S.I. 499 of 2013)
- *European Communities (Birds and Natural Habitats) (Amendment) Regulations 2015* (S.I. No. 355 of 2015)

Legislation previously collectively construed with this Act but no longer in force include:

- *European Communities (Natural Habitats) Regulations 1997* (S.I. No. 94 of 1997), other than part IV
- *Firearms (Temporary Provisions) Act 1998* (32/1998)
- *European Communities (Birds and Natural Habitats) (Control of Recreational Activities) Regulations 2010* (S.I. No. 293 of 2010)

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Heritage Act 2018* (15/2018)
- *Forestry Act 2014* (31/2014)
- *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013)
- *Wildlife (Amendment) Act 2012* (29/2012)
- *Environment (Miscellaneous Provisions) Act 2011* (20/2011)
- *Ministers and Secretaries (Amendment) Act 2011* (10/2011)
- *Wildlife (Amendment) Act 2010* (19/2010)
- *Inland Fisheries Act 2010* (10/2010)
- *Criminal Justice (Miscellaneous Provisions) Act 2009* (28/2009)
- *Sea-Fisheries and Maritime Jurisdiction Act 2006* (8/2009)
- *Courts and Court Officers Act 2002* (15/2002)
- *Wildlife (Amendment) Act 2000* (38/2000)
- *Firearms (Firearm Certificates For Non-Residents) Act 2000* (20/2000)
- *Finance Act 1999* (2/1999)
- *Firearms (Temporary Provisions) Act 1998* (32/1998)
- *Heritage Act 1995* (4/1995)
- *Postal and Telecommunications Services Act 1983* (24/1983)

All Acts up to and including *Judicial Council Act 2019* (33/2019), enacted 23 July 2019, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *European Communities (Cites Simplified Procedures) Regulations 2019* (S.I. No. 411 of 2019)
- *Nature Reserve (Newcastle Lough) Recognition Order 2018* (S.I. No. 602 of 2018)
- *Flora (Protection) Order 2015* (S.I. No. 356 of 2015)
- *European Communities (Birds and Natural Habitats) (Amendment) Regulations 2015* (S.I. No. 355 of 2015)

- *European Communities (Birds and Natural Habitats) (Amendment) Regulations 2013* (S.I. No. 499 of 2013)
- *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 2012* (S.I. No. 402 of 2012)
- *Wildlife (Wild Mammals) (Open Seasons) (Amendment) Order 2012* (S.I. No. 398 of 2012)
- *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011)
- *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011)
- *Wildlife (Import and Export of Fauna and Flora) (Designation of Ports and Airports) (Amendment) Regulations 2011* (S.I. No. 377 of 2011)
- *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 192 of 2011)
- *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 2011* (S.I. No. 39 of 2011)
- *Wildlife Act 1976 (Temporary Suspension of Open Season) (No. 2) (Amendment) Order 2010* (S.I. No. 613 of 2010)
- *Wildlife Act 1976 (Temporary Suspension of Open Season) (No.2) (Amendment) Order 2010* (S.I. No. 598 of 2010)
- *Wildlife Act 1976 (Temporary Suspension of Open Season) (No. 2) Order 2010* (S.I. No. 582 of 2010)
- *European Communities (Birds and Natural Habitats) (Restrictions on use of Poisoned Bait) Regulations 2010* (S.I. No. 481 of 2010)
- *European Communities (Birds and Natural Habitats) (Control of Recreational Activities) Regulations 2010* (S.I. No. 293 of 2010)
- *Wildlife Act 1976 (Temporary Suspension of Open Season) (Amendment) Order 2010* (S.I. No. 6 of 2010)
- *Wildlife Act 1976 (Temporary Suspension of Open Season) Order 2010* (S.I. No. 2 of 2010)
- *Wildlife (Wild Mammals) (Open Seasons) (Amendment) (No. 2) Order 2008* (S.I. No. 346 of 2008)
- *Wildlife (Wild Mammals) (Open Seasons) (Amendment) Order 2008* (S.I. No. 27 of 2008)
- *Wildlife (Wild Mammals) (Open Seasons) Order 2005* (S.I. No. 550 of 2005)
- *European Communities (Natural Habitats) (Amendment) Regulations 2005* (S.I. No. 378 of 2005)
- *Nature Reserve (Fenor Bog) Recognition Order 2004* (S.I. No. 86 of 2004)
- *Wildlife Act 1976 (Approved Traps, Snares and Nets) Regulations 2003* (S.I. No. 620 of 2003)
- *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 2002* (S.I. No. 356 of 2002)
- *Wildlife (Import and Export of Fauna and Flora) (Designation of Ports and Airports) Regulations 2001* (S.I. No. 375 of 2001)
- *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 2000* (S.I. No. 280 of 2000)
- *Nature Reserve (Clochar na gCon) Establishment Order 1999* (S.I. No. 310 of 1999)
- *Flora (Protection) Order 1999* (S.I. No. 94 of 1999)
- *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1998* (S.I. No. 332 of 1998)
- *Wildlife (Wild Mammals) (Open Seasons) Order 1998* (S.I. No. 331 of 1998)
- *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1997* (S.I. No. 363 of 1997)
- *European Communities (Wildlife Act, 1976) (Amendment) Regulations 1997* (S.I. No. 152 of 1997)
- *European Communities (Natural Habitats) Regulations 1997* (S.I. No. 94 of 1997)
- *Wildlife (Wild Mammals) (Open Seasons) (Amendment) Order 1996* (S.I. No. 220 of 1996)
- *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1996* (S.I. No. 219 of 1996)
- *Wildlife (Wild Birds) (Open Seasons) (Amendment) (No. 2) Order 1995* (S.I. No. 304 of 1995)
- *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1995* (S.I. No. 249 of 1995)
- *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 1995* (S.I. No. 61 of 1995)

- *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 1994* (S.I. No. 443 of 1994)
- *Nature Reserve (Cummeragh River Bog) Establishment Order 1994* (S.I. No. 116 of 1994)
- *Nature Reserve (Knocksink Wood) Establishment Order 1994* (S.I. No. 58 of 1994)
- *Nature Reserve (Kilcolman Bog) Recognition Order 1993* (S.I. No. 315 of 1993)
- *Nature Reserve (Kilcolman Bog) Establishment Order 1993* (S.I. No. 314 of 1993)
- *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1993* (S.I. No. 225 of 1993)
- *Nature Reserve (Scragh Bog) Establishment Order 1992* (S.I. No. 350 of 1992)
- *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1992* (S.I. No. 233 of 1992)
- *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1991* (S.I. No. 268 of 1991)
- *Refuge For Fauna (Cow Rock) Designation Order 1991* (S.I. No. 237 of 1991)
- *Refuge For Fauna (Bull Rock) Designation Order 1991* (S.I. No. 236 of 1991)
- *Nature Reserve (Redwood Bog) Establishment Order 1991* (S.I. No. 173 of 1991)
- *Nature Reserve (Glengarriff) Establishment Order 1991* (S.I. No. 172 of 1991)
- *Nature Reserve (Leam West) Establishment Order 1991* (S.I. No. 171 of 1991)
- *Wildlife Act, 1976 (Protection of Wild Animals) Regulations 1990* (S.I. No. 112 of 1990)
- *Nature Reserve (Castlemaine Harbour) Establishment Order 1990* (S.I. No. 10 of 1990)
- *Nature Reserve (Meenachullion) Establishment Order 1990* (S.I. No. 9 of 1990)
- *Nature Reserve (Balleyteige Burrow) Establishment Order 1990* (S.I. No. 8 of 1990)
- *Nature Reserve (Sheheree Bog) Recognition Order 1990* (S.I. No. 7 of 1990)
- *Nature Reserve (Knockmoyle/Sheskin) Establishment Order 1990* (S.I. No. 6 of 1990)
- *Nature Reserve (Easkey Bog) Establishment Order 1990* (S.I. No. 5 of 1990)
- *Wildlife Act, 1976, (Control of Importation of Wild Animals and Wild Birds), Regulations 1989* (S.I. No. 296 of 1989)
- *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1989* (S.I. No. 221 of 1989)
- *Nature Reserve (Derrycunihy Wood) Recognition Order 1989* (S.I. No. 111 of 1989)
- *Nature Reserve (Derrymore Island) Recognition Order 1989* (S.I. No. 110 of 1989)
- *Nature Reserve (Tearaght Island) Recognition Order 1989* (S.I. No. 109 of 1989)
- *Nature Reserve (Tearaght Island) Establishment Order 1989* (S.I. No. 108 of 1989)
- *Nature Reserve (Knockomagh Wood) Establishment Order. 1989* (S.I. No. 107 of 1989)
- *Nature Reserve (Tralee Bay) Establishment Order 1989* (S.I. No. 106 of 1989)
- *Refuge For Fauna (Old Head of Kinsale) Designation Order 1989* (S.I. No. 11 of 1989)
- *Wildlife (Transfer of Departmental Administration and Ministerial Functions) Order 1988* (S.I. No. 353 of 1988)
- *Nature Reserve (Little Skellig) Recognition Order 1988* (S.I. No. 236 of 1988)
- *Nature Reserve (Great Skellig) Establishment Order 1988* (S.I. No. 235 of 1988)
- *Nature Reserve (Fiddown Island) Establishment Order 1988* (S.I. No. 234 of 1988)
- *Nature Reserve (Baldoyle Estuary) Establishment Order 1988* (S.I. No. 233 of 1988)
- *Nature Reserve (North Bull Island) Recognition Order 1988* (S.I. No. 232 of 1988)
- *Nature Reserve (North Bull Island) Establishment Order 1988* (S.I. No. 231 of 1988)
- *Refuge For Fauna (Rockabill Island) Designation Order 1988* (S.I. No. 100 of 1988)
- *Refuge For Fauna (Horn Head) Designation Order 1988* (S.I. No. 99 of 1988)
- *Refuge For Fauna (Cliffs of Moher) Designation Order 1988* (S.I. No. 98 of 1988)
- *Nature Reserve (Lough Nambrackdarrig) Establishment Order 1988* (S.I. No. 73 of 1988)
- *Nature Reserve (Lough Yganavan) Establishment Order 1988* (S.I. No. 72 of 1988)
- *Nature Reserve (Rogerstown Estuary) Establishment Order 1988* (S.I. No. 71 of 1988)
- *Nature Reserve (Derkmore Wood) Establishment Order 1988* (S.I. No. 70 of 1988)
- *Nature Reserve (Glenealo Valley) Establishment Order 1988* (S.I. No. 69 of 1988)
- *Nature Reserve (Glendalough) Establishment Order 1988* (S.I. No. 68 of 1988)
- *Refuge For Fauna (Lady's Island) Designation Order 1988* (S.I. No. 23 of 1988)
- *Nature Reserve (Raheenmore Bog) Establishment Order 1987* (S.I. No. 280 of 1987)
- *Nature Reserve (Ballyteige Burrow) Establishment Order 1987* (S.I. No. 279 of 1987)
- *Flora (Protection) Order 1987* (S.I. No. 274 of 1987)

- *Nature Reserve (The Gearagh) Recognition Order 1987* (S.I. No. 231 of 1987)
- *Nature Reserve (Mongan Bog) Recognition Order 1987* (S.I. No. 230 of 1987)
- *Nature Reserve (Puffin Island) Recognition Order 1987* (S.I. No. 229 of 1987)
- *Nature Reserve (Puffin Island) Establishment Order 1987* (S.I. No. 228 of 1987)
- *Nature Reserve (Lough Barra Bog) Establishment Order 1987* (S.I. No. 227 of 1987)
- *Nature Reserve (Clara Bog) Establishment Order 1987* (S.I. No. 226 of 1987)
- *Wildlife (Transfer of Departmental Administration and Ministerial Functions) Order 1987* (S.I. No. 156 of 1987)
- *Communications (Transfer of Departmental Administration and Ministerial Functions) Order 1987* (S.I. No. 91 of 1987)
- *Public Service (Transfer of Departmental Administration and Ministerial Functions) Order 1987* (S.I. No. 81 of 1987)
- *Nature Reserve (Mount Brandon) Establishment Order 1986* (S.I. No. 420 of 1986)
- *Nature Reserve (Eirk Bog) Establishment Order 1986* (S.I. No. 419 of 1986)
- *Nature Reserve (Ballyteige) Establishment Order 1986* (S.I. No. 418 of 1986)
- *Nature Reserve Ballygilgan (Lissadell) Establishment Order 1986* (S.I. No. 417 of 1986)
- *Nature Reserve (Owenboy) Establishment Order 1986* (S.I. No. 416 of 1986)
- *Nature Reserve (Knockmoyle/Sheekin) Establishment Order 1986* (S.I. No. 415 of 1986)
- *Nature Reserve (Pollardstown Fen) Establishment Order 1986* (S.I. No. 414 of 1986)
- *Nature Reserve (Keelhilla, Slievecarran) Establishment Order, 1986* (S.I. No. 346 of 1986)
- *Nature Reserve (Ballyarr Wood) Establishment Order 1986* (S.I. No. 345 of 1986)
- *Nature Reserve (Duntally Wood) Establishment Order 1986* (S.I. No. 344 of 1986)
- *Nature Reserve (Rathmullan Wood) Establishment Order 1986* (S.I. No. 343 of 1986)
- *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1986* (S.I. No. 307 of 1986)
- *Wildlife (Wild Mammals) (Open Seasons) (Amendment) Order 1986* (S.I. No. 306 of 1986)
- *European Communities (Wildlife Act, 1976) (Amendment) Regulations 1986* (S.I. No. 254 of 1986)
- *European Communities (Wildlife Act, 1976) (Amendment) Regulations 1985* (S.I. No. 397 of 1985)
- *Nature Reserve (Capel Island and Knockadoon Head) Recognition Order 1985* (S.I. No. 384 of 1985)
- *Nature Reserve (Timahoe Esker) Establishment Order 1985* (S.I. No. 383 of 1985)
- *Nature Reserve (Slieve Bloom Mountains) Establishment Order 1985* (S.I. No. 382 of 1985)
- *Nature Reserve (Capel Island and Knockadoon Head) Establishment Order 1985* (S.I. No. 381 of 1985)
- *Nature Reserve (Richmond Esker) Establishment Order 1985* (S.I. No. 380 of 1985)
- *Nature Reserve (Dromore) Establishment Order 1985* (S.I. No. 379 of 1985)
- *Wildlife (Wild Birds) (Open Seasons) (Amendment) (No. 2) Order 1985* (S.I. No. 347 of 1985)
- *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1985* (S.I. No. 346 of 1985)
- *Wildlife Act, 1976 (Section 27) (No. 2) Order 1985* (S.I. No. 12 of 1985)
- *Wildlife Act, 1976 (Section 27) Order 1985* (S.I. No. 11 of 1985)
- *Nature Reserve (Pettigo Plateau) Establishment Order 1984* (S.I. No. 334 of 1984)
- *Nature Reserve (Oldhead Wood) Establishment Order 1984* (S.I. No. 333 of 1984)
- *Wildlife (Wild Birds) (Open Season) (Amendment) Order 1984* (S.I. No. 283 of 1984)
- *Wildlife Act, 1976 (Birds of Prey) Regulations 1984* (S.I. No. 8 of 1984)
- *Nature Reserve (Coole Garryland) Establishment Order 1983* (S.I. No. 379 of 1983)
- *Nature Reserve (Ballynastaig Wood) Establishment Order 1983* (S.I. No. 378 of 1983)
- *Nature Reserve (Pollnacknockaun Wood) Establishment Order 1983* (S.I. No. 377 of 1983)
- *Nature Reserve (Derrycrag Wood) Establishment Order 1983* (S.I. No. 376 of 1983)
- *Nature Reserve (Rosturra Wood) Establishment Order 1983* (S.I. No. 375 of 1983)
- *Nature Reserve (Vale of Clara) Establishment Order 1983* (S.I. No. 374 of 1983)
- *Nature Reserve (The Raven) Establishment Order 1983* (S.I. No. 200 of 1983)
- *Nature Reserve (Deputy's Pass) Establishment Order 1982* (S.I. No. 381 of 1982)
- *Nature Reserve (Uragh Wood) Establishment Order 1982* (S.I. No. 380 of 1982)

- *Nature Reserve (Coolacurragh Wood) Establishment Order 1982* (S.I. No. 379 of 1982)
- *Nature Reserve (Grantstown Wood and Granston Lough) Establishment Order 1982* (S.I. No. 378 of 1982)
- *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1982* (S.I. No. 266 of 1982)
- *Wildlife Act, 1976 (Section 27) (No. 2) Order 1982* (S.I. No. 15 of 1982)
- *Wildlife Act, 1976 (Section 27) Order 1982* (S.I. No. 3 of 1982)
- *Nature Reserve (Lough Hyne) Regulations 1981* (S.I. No. 207 of 1981)
- *Nature Reserve (Lough Hyne) Establishment Order 1981* (S.I. No. 206 of 1981)
- *Nature Reserve (Wexford Wildfowl Reserve) Establishment Order 1981* (S.I. No. 205 of 1981)
- *Nature Reserve (Garryrickin) Establishment Order 1980* (S.I. No. 389 of 1980)
- *Nature Reserve (Kyleadohir) Establishment Order 1980* (S.I. No. 388 of 1980)
- *Nature Reserve (Caher (Murphy)) Establishment Order 1980* (S.I. No. 387 of 1980)
- *Nature Reserve (Ballykeefe) Establishment Order 1980* (S.I. No. 386 of 1980)
- *Flora (Protection) Order 1980* (S.I. No. 338 of 1980)
- *Wildlife Act, 1976 (Protection of Bullfinches) Regulations 1980* (S.I. No. 283 of 1980)
- *Wildlife Act 1976 (Protection of Wild Animals) Regulations 1980* (S.I. No. 282 of 1980)
- *Wildlife Act, 1976 (Section 44) (Recognised Bodies) Regulations 1980* (S.I. No. 233 of 1980)
- *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1980* (S.I. No. 229 of 1980)
- *Nature Reserve (Glen of the Downs) Establishment Order 1980* (S.I. No. 178 of 1980)
- *Nature Reserve (Derryclare) Establishment Order 1980* (S.I. No. 177 of 1980)
- *Wildlife Act, 1976 (Control of Export of Fauna) Regulations 1979* (S.I. No. 235 of 1979)
- *Wildlife (Wild Mammals) (Open Seasons) Order 1979* (S.I. No. 193 of 1979)
- *Wildlife (Wild Birds) (Open Seasons) Order 1979* (S.I. No. 192 of 1979)
- *Wildlife (Wild Mammals) (Open Seasons) Order 1978* (S.I. No. 202 of 1978)
- *Wild Birds (Open Seasons) Order 1978* (S.I. No. 201 of 1978)
- *Wildlife Advisory Council Order 1978* (S.I. No. 79 of 1978)
- *Wildlife Act, 1976 (Acquisition of Land) Regulations 1978* (S.I. No. 29 of 1978)
- *Wildlife Act, 1976 (Section 44) (Recognised Bodies) Regulations 1977* (S.I. No. 335 of 1977)
- *Wildlife Act, 1976 (Approved Traps, Snares and Nets) Regulations 1977* (S.I. No. 307 of 1977)
- *Wildlife Act, 1976 (Wildlife Dealing) Regulations 1977* (S.I. No. 253 of 1977)
- *Wild Birds (Open Seasons) Order 1977* (S.I. No. 243 of 1977)
- *Wildlife (Wild Mammals) (Open Seasons) Order 1977* (S.I. No. 240 of 1977)
- *Wildlife Act, 1976 (Firearms and Ammunition) Regulations 1977* (S.I. No. 239 of 1977)
- *Wildlife Act, 1976 (Certificate of Peace Commissioner) Regulations 1977* (S.I. No. 210 of 1977)
- *Wildlife Act, 1976 (Commencement) Order 1977* (S.I. No. 154 of 1977)
- *Fisheries (Transfer of Departmental Administration and Ministerial Functions) Order 1977* (S.I. No. 30 of 1977)

All statutory instruments up to and including *European Communities (Cites Simplified Procedures) Regulations 2019* (S.I. No. 411 of 2019), made 1 August 2019, were considered in the preparation of this revision.



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WILDLIFE ACT 1976

REVISED

Updated to 1 August 2019

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY AND GENERAL

Section

1. Short title, commencement and collective citation.
2. Definitions.
3. Service of notices, etc.
4. Expenses.
5. Application of moneys received by Minister.
6. Gifts.
7. Reports.
8. Regulations and orders.
9. Licences.
10. Repeals.

PART II

WILDLIFE CONSERVATION AND PROTECTION

CHAPTER I

General

11. Functions of Minister in relation to wildlife.
12. Obligations generally of Ministers of State and certain other authorities and bodies in relation to nature reserves and refuges.
13. Wildlife Advisory Council.
14. Establishment of boards to provide or administer certain services.

CHAPTER II

Reserves and Refuges

15. Nature reserves on lands owned by the Minister or by the State.
16. Nature reserves on land other than land to which section 15 applies.
17. Refuges for fauna.
18. Agreement as to user and management of land.

CHAPTER III

Protection of wild birds, protected animals and flora

19. Protection of wild birds.
20. Protection of fauna (other than protected wild birds).
21. Protection of flora.
22. Enforcement of protection of wild birds.
23. Enforcement of protection of wild animals (other than wild birds).
- 23A. Prohibition on deer hunting with dogs.
24. Open seasons for certain protected wild birds.
25. Open seasons for certain wild mammals.
26. Licences to hunt otters or deer and to hunt or course hares.
27. Temporary suspension of open seasons.

CHAPTER IV

Restrictions to protect wildlife

28. General restriction as regards hunting or killing with firearms certain exempted wild mammals and certain protected wild birds.
29. Licences to hunt with firearms.
30. Hunting restricted on or over foreshore belonging to State and certain land so belonging.
31. Sale, purchase and possession of certain perching birds prohibited.
32. Ringing and marking, and possession of cannon-nets, etc. restricted.
33. Restriction on use of certain firearms etc.
34. Certain use of traps, snares etc. prohibited.
35. Certain use of scarecrows, decoys, birdcalls and calls of wild mammals restricted.
36. Use of mechanically-propelled vehicles, vessels and aircraft in hunting prohibited.
37. Hunting by night restricted.
38. Use of lamps, mirrors etc. in hunting prohibited.
39. Burning of vegetation near woods or certain other land restricted.
40. Destruction of vegetation on uncultivated land restricted.

CHAPTER V

Miscellaneous

41. Falconry etc.
42. Damage by wild birds etc.
43. Land drainage schemes.
44. Unlawful hunting or entry on land and other miscellaneous matters.

PART III

REGULATION AND CONTROL OF WILDLIFE DEALING AND THE TRANSPORT,
IMPORT AND EXPORT OF WILDLIFE

45. Sale, purchase and possession of fauna restricted.
46. Regulation and control of wildlife dealing.
47. Prohibition on wildlife dealing without wildlife dealer's licence.
48. Wildlife dealer's licence.
49. Revocation of wildlife dealer's licence.
50. Minister may publish list of wildlife dealers or notice of revocation.
51. Transport of packages etc. containing certain fauna.
52. Import of fauna and flora.
53. Export of fauna and flora.
- 53A. Regulation of trade in wild flora and fauna and CITES Regulations.
- 53B. Simplified procedures for export or re-export of dead specimens of species listed in Annexes B and C to Council Regulation.
54. Saver in relation to Customs Acts.

PART IV

LAND AND WATERS

55. Land purchase orders.
56. Management etc. of certain land acquired, held or used by the Minister.
57. State ownership of certain inland waters.
58. Right to hunt on or over territorial seas of State vested in State.
59. Regulations permitting and regulating public access to certain land.
60. Creation of rights of way. (*Repealed*)
61. Extinguishment of easements. (*Repealed*)

PART V

AMENDMENT OF ENACTMENTS.

62. Amendment of section 3 of Firearms Act, 1925.
63. Amendment of sections 9, 21, 22, 23 and 58 of Act of 1946.
64. Amendment of First Schedule to State Property Act, 1954.
65. Amendment of Firearms Act, 1964.
66. Amendment of section 69 of Registration of Title Act, 1964.

67. Restriction of Part V of Protection of Animals (Amendment) Act, 1965.

PART VI

MISCELLANEOUS

68. Inspection of land. (*Repealed*)
69. Attempts etc. and miscellaneous other offences.
70. Prosecution of offences.
71. Onus of proof.
72. Powers of Garda Síochána and authorised persons.
73. Search warrants.
74. Penalties.
74A. Fixed payment notice.
75. Power of court to revoke certain certificates and licences and to impose certain disqualifications.
76. Forfeiture.
77. Appeal against seizures.
78. Disposal of things seized.

FIRST SCHEDULE

ENACTMENTS REPEALED

SECOND SCHEDULE

PROVISIONS WHICH MAY BE INCLUDED IN AN ORDER UNDER SECTION
14

THIRD SCHEDULE

SPECIES OF WILD BIRDS EXCLUDED (SUBJECT TO SECTION 22 (2))
FROM SECTIONS 19 AND 22

FOURTH SCHEDULE

FAUNA REFERRED TO IN SECTION 22 (6) OR 23 (8)

PART I

SPECIES OF PROTECTED WILD BIRDS REFERRED TO IN SECTION 22
(6)

PART II

SPECIES OF PROTECTED WILD ANIMALS REFERRED TO IN SECTION 23
(8)

FIFTH SCHEDULE

ANIMALS REFERRED TO IN SECTION 23

 ACTS REFERRED TO

Acquisition of Land (Assessment of Compensation) Act, 1919	1919, c. 57
Forestry Act, 1946	1946, No. 13
Forestry Act, 1956	1956, No. 6
Factories Act, 1955	1955, No. 10
Foreshore Act, 1933	1933, No. 12
Local Government Act, 1941	1941, No. 23
Greyhound Industry Act, 1958	1958, No. 12
Maritime Jurisdiction Act, 1959	1959, No. 22
Companies Act, 1963	1963, No. 33
Local Government (Planning and Development) Act, 1963	1963, No. 28
Local Government (Planning and Development) Act, 1976	1976, No. 20
Finance Act, 1895	1895, c. 16
Registration of Title Act, 1964	1964, No. 16
Whale Fisheries Act, 1937	1937, No. 4
Firearms Act, 1925	1925, No. 17
Firearms Act, 1964	1964, No. 1
Protection of Animals Act, 1911	1911, c. 27
Noxious Weeds Act, 1936	1936, No. 38
Arterial Drainage Act, 1945	1945, No. 3
Game Preservation Act, 1930	1930, No. 11
Destructive Insects and Pests (Consolidation) Act, 1958	1958, No. 11
Diseases of Animals Act, 1966	1966, No. 6
Health Act, 1947	1947, No. 28
Health Act, 1953	1953, No. 26
Agricultural and Fishery Products (Regulation of Export) Act, 1947	1947, No. 18
Water Supplies Act, 1942	1942, No. 1
State Property Act, 1954	1954, No. 25
Protection of Animals (Amendment) Act, 1965	1965, No. 10
Petty Sessions (Ireland) Act, 1851	1851, c. 93
Superannuation Act, 1859	1859, c. 26



Number 39 of 1976

WILDLIFE ACT 1976

REVISED

Updated to 1 August 2019

AN ACT FOR THE CONSERVATION OF WILDLIFE (INCLUDING GAME) AND FOR THAT PURPOSE TO PROTECT CERTAIN WILD CREATURES AND FLORA, TO ENABLE A BODY TO BE KNOWN IN THE IRISH LANGUAGE AS AN CHOMHAIRLE UM FHIADHULRA AND IN THE ENGLISH LANGUAGE AS THE WILDLIFE ADVISORY COUNCIL TO BE ESTABLISHED AND TO DEFINE ITS FUNCTIONS, TO ENABLE CERTAIN OTHER BODIES TO BE ESTABLISHED TO PROVIDE OR ADMINISTER CERTAIN SERVICES, TO ENABLE RESERVES AND REFUGES FOR WILDLIFE TO BE ESTABLISHED AND MAINTAINED, TO ENABLE DEALING IN AND MOVEMENT OF WILDLIFE TO BE REGULATED AND CONTROLLED, TO MAKE CERTAIN PROVISIONS RELATING TO LAND, INLAND WATERS AND THE TERRITORIAL SEAS OF THE STATE, TO AMEND CERTAIN ENACTMENTS AND TO MAKE OTHER PROVISIONS CONNECTED WITH THE FOREGOING. [22nd December, 1976]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

- C1** Application of collectively cited *Wildlife Acts 1976 to 2010* restricted (21.09.2011) by *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011), reg. 9(10), in effect as per reg. 1(3).
- Surveillance and monitoring*
- 9.** ...
- (10) A person may lawfully do anything authorised by a licence under this Regulation notwithstanding any provision of the *Wildlife Acts 1976 to 2010* and for the avoidance of doubt shall not require a licence under those Acts to do anything so authorised.
- C2** Functions transferred and references to “Department of the Environment, Heritage and Local Government” and “Minister for the Environment, Heritage and Local Government” construed (1.05.2011) by *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 192 of 2011), arts. 2 and 3 and sch. part 1, in effect as per art. 1(2), subject to transitional provisions in arts. 4-8. Note that name of Minister and Department changed to Arts, Heritage and the Gaeltacht (2.06.2011) by *Tourism, Culture and Sport (Alteration of Name of Department and Title of Minister) Order 2011* (S.I. No. 220 of 2011), in effect as per art. 1(2); and to Arts, Heritage, Regional, Rural and Gaeltacht Affairs (7.07.2016) by *Arts, Heritage and the Gaeltacht (Alteration of Name of Department and Title of Minister) Order 2016* (S.I. No. 357 of 2016), in effect as per art. 1(2).

3. (1) The powers, duties and functions vested in the Minister for the Environment, Heritage and Local Government—

(a) by or under any of the Acts mentioned in Part 1 of the Schedule,

(b) under the Regulations mentioned in Part 2 of the Schedule, and

(c) to make a recommendation to which section 12(3)(b)(iii) of the Planning and Development Act 2000 (No. 30 of 2000) applies, and to make observations to which section 12(3)(b)(iv) of that Act applies,

are transferred to the Minister for Tourism, Culture and Sport.

(2) References to the Minister for the Environment, Heritage and Local Government contained in any Act or instrument made under such Act and relating to any powers, duties and functions transferred by this Order shall, on and after the commencement of this Order, be construed as references to the Minister for Tourism, Culture and Sport.

...

SCHEDULE

Part 1

Enactments, powers, duties and functions by or under which are transferred from the Minister for the Environment, Heritage and Local Government to the Minister for Tourism, Culture and Sport.

...

Wildlife Act 1976 (No. 39 of 1976);

C3 Application of collectively cited *Forestry Acts 1946 to 1988* restricted (11.09.1998) by *Air Navigation and Transport (Amendment) Act 1998* (24/1998), s. 46(1), S.I. No. 327 of 1998.

Lopping, cutting or removal of certain trees, etc.

46.—(1) Notwithstanding anything contained in the *Forestry Acts, 1946 to 1988*, the company may lop, cut or remove, or cause to be lopped, cut or removed, any tree, bush, shrub, hedge, plant or other matter growing naturally or with artificial assistance on land in the vicinity of a State airport which, in the opinion of the company, interferes with the operation and development of that airport, or which, following consultation with the Authority, the company considers obstructs or otherwise interferes with the safety or navigation of aircraft using such airport.

...

C4 Application of Act restricted (21.07.1986) by *European Communities (Wildlife Act, 1976) (Amendment) Regulations 1986* (S.I. No. 254 of 1986), reg. 3(1) and schs. 1 and 2, in effect as per reg. 1(2), as amended (26.04.1997) by *European Communities (Wildlife Act, 1976) (Amendment) Regulations 1997* (S.I. No. 152 of 1997), reg. 2, in effect as per reg. 1(2).

3.(1) Notwithstanding the provisions of the *Wildlife Act, 1976* (No. 39 of 1976).

(a) where the Minister is of the opinion that a species referred to in the *First Schedule* to these Regulations—

(i) is a threat to public health or safety,

(ii) is likely to cause serious damage to crops, livestock, fisheries or forestry,

(iii) is likely to cause damage to flora and fauna,

he may declare that for the purpose of preventing disease or injury the said species may be captured or killed in any part of the State or throughout the State by any of the means, arrangements or methods set out in the *Second Schedule* to these Regulations, during such period or periods specified in the declaration and by the person or persons or class of person or persons specified in the declaration,

(b) where the Minister is of the opinion that a species of wild bird is a threat to air safety he may declare that the said species may be captured or killed in any part of the State or throughout the State by any of the means, arrangements or methods set out in the *Second*

Schedule to these Regulations during such period or periods specified in the declaration and by the person or persons or class of person or persons specified in the declaration.

...

FIRST SCHEDULE.

Carrion Crow.

Hooded (Grey) Crow.

Magpie.

Rook.

Jackdaw.

Starling.

Herring Gull.

Greater Black-backed Gull.

Lesser Black-backed Gull.

[House Sparrow].

[Pigeon and Dove including Wood Pigeon, Feral Pigeon and Collared Dove but not including Carrier Pigeon, Fan Tailed Pigeon, Homing Pigeon or other domestic types of Rock Dove, Stock Dove, Wild Rock Dove or Turtle Dove].

SECOND SCHEDULE

Shooting with rifle or shotgun.

Poisoned or anaesthetic bait.

Cage traps with or without live decoys.

Traps, snares or nets approved under the *Wildlife Act, 1976 (Approved Traps, Snares and Nets) Regulations, 1977* (S.I. No. 307 of 1977).

Editorial Notes:

- E1** Certificates of appointment issued under *European Communities (Birds and Natural Habitats) Regulations 2011*, reg. 4(2)(a) deemed to constitute any consent required by any Minister of Government under Act (21.09.2011) by *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011), reg. 4(8), in effect as per reg. 1(3).
- E2** Power to transfer fishery or fishing rights, acquired by or vested in Minister for Agriculture, Food and the Marine under collectively cited *Forestry Acts 1946 to 1988*, prescribed (1.07.2010) by *Inland Fisheries Act 2010* (10/2010), s. 64(1)(a), commenced as per s. 5(2) and S.I. No. 262 of 2010, as construed (17.10.2011) by *Agriculture, Fisheries and Food (Alteration of Name of Department and Title of Minister) Order 2011* (S.I. No. 455 of 2011), art. 4(b), in effect as per art. 1(2).
- E3** Additional powers prescribed in connection with performance of functions under Act (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 66, S.I. No. 371 of 2001.
- E4** Previous affecting provision: functions under Act transferred and references to “Department of Community, Rural and Gaeltacht Affairs” and “Minister for Community, Rural and Gaeltacht Affairs” construed (10.07.2002) by *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 2002* (S.I. No. 356 of 2002), arts. 3 and 4 and sch. part 1, in effect as per art. 1(2), subject to transitional provisions in arts. 5-9; superseded as per C-note above.
- E5** Previous affecting provision: functions transferred and references to “Department of Finance” and “Minister for Finance” construed (20.12.1994) by *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 1994* (S.I. No. 443 of 1994), arts. 3 and 4, subject to transitional provisions in arts. 5-9; superseded as per E-note above.

- E6** Previous affecting provision: power to transfer fishery or fishing rights, acquired by or vested in “the Minister” under collectively cited *Forestry Acts 1946 to 1988*, prescribed (18.03.1980) by *Fisheries Act 1980* (1/1980), s. 42(2)(a), commenced on enactment, and as substituted (20.12.1999) by *Fisheries (Amendment) Act 1999* (35/1999), s. 19, S.I. No. 419 of 1999; repealed (1.06.2010) by *Inland Fisheries Act 2010* (10/2010), s. 4 and sch. 1, commenced on enactment. The Act does not define “the Minister” but this appears to refer to the Minister for Fisheries and Forestry as the ministerial title then was.
- E7** Previous affecting provision: functions transferred and references to “Department of Energy” and “Minister for Energy” construed (30.06.1987) by *Wildlife (Transfer of Departmental Administration and Ministerial Functions) Order 1987* (S.I. No. 156 of 1987), arts. 3 and 4, in effect as per art. 1(2), subject to transitional provisions in arts. 5-9; superseded as per E-note above.
- E8** Previous affecting provision: functions under Act transferred and references to “Minister for the Public Service” construed (19.03.1987) by *Public Service (Transfer of Departmental Administration and Ministerial Functions) Order 1987* (S.I. No. 81 of 1987), arts. 3 and 4 and sch., subject to transitional provisions in arts. 5-9; superseded as per C-note above.
- E9** Previous affecting provision: functions under Act relating to fisheries transferred and references to “Department of” and “Minister for Agriculture and Fisheries” under Act construed as “Department of” and “Minister for Lands” (8.02.1977) by *Fisheries (Transfer of Departmental Administration and Ministerial Functions) Order, 1977* (S.I. No. 30 of 1977), arts. 3, 4(5), subject to transitional provisions in arts. 5-8; superseded as per C-note above.

PART I

PRELIMINARY AND GENERAL

Short title,
commencement
and collective
citation.

1.—(1) This Act may be cited as the Wildlife Act, 1976.

(2) This Act shall come into operation on such day or days as may be fixed therefor by order or orders of the Minister, either generally or with reference to any particular purpose or provision, and different days may be fixed for different purposes and different provisions of this Act.

(3) The Forestry Acts, 1946 and 1956, and sections 55 and 63 of this Act may be cited together as the Forestry Acts, 1946 to 1976.

Definitions.

2.—(1) In this Act—

“the Act of 1919” means the Acquisition of Land (Assessment of Compensation) Act, 1919;

“the Act of 1946” means the Forestry Act, 1946;

“the Act of 1956” means the Forestry Act, 1956;

“agriculture” includes horticulture;

“airgun” means any weapon, including an air-rifle or air-pistol, incorporating a barrel from which metal or other slugs can be discharged;

“authorised person” means a person who is appointed under section 72 of this Act by the Minister to be an authorised person for the purposes of this Act;

“the Board”, except in section 14 and the Second Schedule hereto, means An Bord Pleanála;

“building operation” has the same meaning as in section 2 of the Factories Act, 1955;

F1[“the CITES Convention” means the Convention on International Trade in Endangered Species of Wild Fauna and Flora done at Washington on the 3rd day of March, 1973, as subsequently duly amended;

F2[“CITES Regulations” means Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein² and Commission Regulation (EC) No. 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No. 338/97 on the protection of species of wild fauna and flora by regulating trade therein, together with any amendments to or replacements of those Regulations;]

“the Commissioners” means the Commissioners of Public Works in Ireland;

F3[“communities” means any naturally occurring group of organisms that occupy a common environment;]

F4[“conservation” includes measures to maintain or enhance or restore the quality, value or diversity of species, habitats, communities, geological features or geomorphological features;]

“the Council” means the body established by section 13 of this Act;

“designation order” has the meaning assigned to it by section 17 of this Act;

“establishment order” has the meaning assigned to it by section 15 of this Act;

“exempted wild mammal” has the meaning assigned to it by section 25 of this Act;

F5[“export”, where the context so admits, includes re-export and cognate words shall be construed accordingly;]

“falconry” means hunting by means of birds of the order F6[orders *Accipitriformes*, *Falconiformes* and *Strigiformes*] which are trained to hawk for sport;

F7[“fauna” means all wild birds and all wild animals (both aquatic and terrestrial) and includes wild mammals, reptiles, amphibians and aquatic and non-aquatic invertebrate animals, and all such wild animals' eggs, larvae, pupae or other immature stage and young;]

“firearm” means any lethal firearm or other lethal weapon of any description (including an airgun) from which any shot, bullet, slug or other missile can be discharged;

“flora” means all plants (both aquatic and terrestrial) which occur in the wild (whether within or outside the State) and are not trees, shrubs or other plants being grown in the course of agriculture F8[, aquaculture, forestry] or horticulture and includes in particular lichens, mosses, liverworts, fungi, algae and vascular plants, namely flowering plants, F8[conifers,] ferns and fern-allied plants and any community of such plants;

“foreshore” has the same meaning as in section 1 of the Foreshore Act, 1933;

F9[“fossil” includes the remains or imprints, in whole or in part, of animals, plants or any other organisms of uncertain affinity, or of their activities, which are preserved in rocks or deposits at the surface, or beneath the surface, of land;]

“functions” includes powers and duties;

F10[“geology” includes—

- (a) the study of the Earth (as a whole or in part), the materials of which it is made, the processes that act and have acted upon those materials and the products and structures formed by such action, and

(b) the physical and biological history of the Earth since its origin including the history of rock sequences as well as the history of life preserved as fossils in rocks and deposits at the surface, or in layers beneath the surface, of land;

“geomorphology” includes the configuration of the Earth's surface and its particular landforms generated by natural processes, such as cliffs, eskers, drumlins, caves, turloughs or other features of the landscape formed by natural processes;

“habitat” includes—

(a) the abode or natural home and the locality thereto of—

(i) a particular species or population of a particular species, at any stage of life, or

(ii) a community of organisms.

(b) a distinctive type of terrain, site or location, distinguished by physical, geographical, vegetational or other features;

(c) a specific locality where a particular fossil, mineral, geological or geomorphological feature is to be found;]

“hares order” means an order made by the Minister under *section 25* of this Act and in which any species of hare is specified;

“hunt” means stalk, pursue, chase, drive, flush, capture, course, attract, follow, search for, lie in wait for, take, trap or shoot by any means whether with or without dogs, and, except in sections 28 and 29, includes killing in the course of hunting, F11[...] and kindred words shall be construed accordingly;

F12[“import”, where the context so admits, includes reimport and cognate words shall be construed accordingly;]

“inland waters” means any waters comprised in the internal or inland waters of the State;

“interest” includes any estate, term, easement or *profit à prendre*;

“land”, where the context admits, includes land covered by water and in relation to the acquisition of land also includes any easement, *profit à prendre* or other right in, to or over land or water (including any easement, *profit à prendre* or other right granted to or held by the Minister);

“the Lay Commissioners” means the Commissioners of the Irish Land Commission other than the Judicial Commissioner;

“licensed wildlife dealer” means a person who for the time being is the holder of a wildlife dealer’s licence;

“local authority” means a local authority for the purposes of the Local Government Act, 1941;

F13[“mechanically-propelled vehicle” has the same meaning as it has in the Road Traffic Act, 1961;

“mineral” includes any naturally occurring organic or inorganic element or chemical compound of set composition, internal structure and physical properties and occurring generally, but not always, in crystal form;]

“the Minister” means the Minister for Lands;

F14[“natural heritage” area means an area which is worthy of conservation for one or more species, communities, habitats, landforms or geological or geomorphological features, or for its diversity of natural attributes;

“natural heritage area order” means an order made under section 18 of the Wildlife (Amendment) Act, 2000;

“nature reserve” means an area managed primarily for conservation of one or more species, communities, habitats or for any feature of geological, geomorphological or other natural interest which is provided for by the Minister in accordance with the *Wildlife Acts, 1976 and 2000*;

F15[“ornithology” means any study of wild birds for the purposes of research or teaching which leads to a better understanding of the biology, ecology and conservation requirements of wild birds;]

F16[“orphaned”, in relation to any wild bird or any wild animal, includes a dependant young wild bird or dependant young wild animal which has been abandoned and which, in the circumstances, would be unlikely to survive unaided in the wild;]

“owner” in relation to land means—

(a) where the land is vested under the Land Purchase Acts in the Irish Land Commission, but not in the tenant-purchaser or purchaser thereof, the person who is for the time being the tenant-purchaser or the purchaser, as the case may be, of such land, and

(b) in any other case, the owner of the lowest estate in the land constituting an estate saleable under the Land Purchase Acts;

“planning authority” means a planning authority for the purposes of the Local Government (Planning and Development) Acts, 1963 and 1976;

“prescribed” means prescribed by regulations made by the Minister under this Act;

“protected wild animal” has the meaning assigned to it by section 23 (4) of this Act;

“protected wild bird” has the meaning assigned to it by section 22 (3) of this Act;

“recognition order” has the meaning assigned to it by section 16 of this Act;

“regulated coursing match” means a coursing match held in accordance with the rules for such matches which are for the time being both published and approved by the Irish Coursing Club pursuant to the Greyhound Industry Act, 1958;

F17[“species” means any species, except man, and includes subspecies and varieties, hybrids and populations thereof;]

“sporting rights” does not include fishing rights;

F18[‘territorial seas of the State’ means the portion of the sea which is defined by section 82 of the Sea-Fisheries and Maritime Jurisdiction Act 2006 as the territorial seas of the State;]

F19[“wild animal” includes an individual of a population which primarily lives independent of human husbandry but does not include—

(a) wild birds, or

(b) species of fish or aquatic invertebrate animals (or their eggs or spawn or other immature stage or brood or young) which are of a species specified in regulations made by the Minister with the prior consent of the Minister for the Marine and Natural Resources under section 32 of the Wildlife (Amendment) Act, 2000;]

“wild bird” includes the F20[eggs and] unflown young of a wild bird;

“wildlife dealer” means any person who carries on the business of wildlife dealing;

“wildlife dealer’s licence” has the meaning assigned to it by section 48 of this Act;

“wild duck” means wild duck of any species;

“wild mammal” includes both aquatic and terrestrial wild mammals and their young;

“wildlife” means fauna and flora;

“work of engineering construction” has the same meaning as in section 2 of the Factories Act, 1955.

(2) Any reference in this Act to sale includes a reference to disposing by way of barter, offering for sale and inviting an offer to buy and words in this Act which are kindred to sale shall be construed accordingly, and except in section 47 and section 55 any reference in this Act to purchase includes a reference to acquiring by way of barter, offering to purchase and inviting an offer to sell.

F21[(3) For the purposes of this Act the business of wildlife dealing means the business of buying for resale any wild birds or wild animals whether alive or dead, or any part, product or derivative of such birds or animals and includes engaging in taxidermy in respect of such birds or animals.]

(4) Nothing in this Act shall be construed as prohibiting or restricting the doing by any person, whether as an employee or otherwise, of any act, other than the killing of fauna, which is done by that person in assisting another person lawfully to hunt fauna.

Annotations

Amendments:

- F1** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 6(1)(a), S.I. No. 371 of 2001.
- F2** Substituted (1.08.2019) by *European Communities (Cites Simplified Procedures) Regulations 2019* (S.I. No. 411 of 2019), reg. 2(a).
- F3** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 6(1)(b), S.I. No. 371 of 2001.
- F4** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 6(1)(c), S.I. No. 371 of 2001.
- F5** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 6(1)(d), S.I. No. 371 of 2001.
- F6** Substituted ((31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 6(1)(e), S.I. No. 371 of 2001.
- F7** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 6(1)(f), S.I. No. 371 of 2001.
- F8** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 6(1)(g), S.I. No. 371 of 2001.
- F9** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 6(1)(h), S.I. No. 371 of 2001.
- F10** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 6(1)(i), S.I. No. 371 of 2001.
- F11** Deleted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 6(1)(j), S.I. No. 371 of 2001.
- F12** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 6(1)(k), S.I. No. 371 of 2001.
- F13** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 6(1)(l), S.I. NO. 371 of 2001.
- F14** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 6(1)(m), S.I. No. 271 of 2001.
- F15** Inserted (6.12.1985) by *European Communities (Wildlife Act, 1976) (Amendment) Regulations 1985* (S.I. No. 397 of 1985), reg. 3(a), in effect as per reg. 1(2).

- F16** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 6(1)(n), S.I. NO. 371 of 2001.
- F17** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 6(1)(o), S.I. No. 371 of 2001.
- F18** Substituted (4.04.2006) by *Sea-Fisheries and Maritime Jurisdiction Act 2006* (8/2006), s. 93(3), commenced on enactment.
- F19** Inserted (31.07.2001) by *Wildlife (Amendment) Act, 2000* (38/2000), s. 6(1)(p), S.I. No. 371 of 2001.
- F20** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 6(1)(q), S.I. No. 371 of 2001.
- F21** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 6(2), S.I. No. 371 of 2001.

Service of notices, etc.

3.—(1) Where a notice, copy of an order, or copy of regulations is required by this Act, other than *section 48, 60 or 61*, or any regulation made under this Act to be served on, given or sent to a person, unless the context otherwise requires, it shall be addressed to him and shall be served on, given or sent to him in some one of the following ways:

- (a) where it is addressed to him by name, by delivering it to him;
- (b) by leaving it at the address at which he ordinarily resides or, in a case in which an address for service has been furnished, at that address;
- (c) by sending it by post in a prepaid registered letter addressed to him at the address at which he ordinarily resides or, in a case in which an address for service has been furnished, at that address;
- (d) where the address at which he ordinarily resides cannot be ascertained by reasonable inquiry and the notice or copy is so required or authorised to be served or given in respect of any land or premises, by delivering the notice or copy to some person over sixteen years of age resident or employed on such land or premises or by affixing it in a conspicuous position on or near such land or premises.

(2) Where a notice, copy of an order, or copy of regulations is required by this Act, other than *section 48, 60 or 61*, or any regulation made under this Act to be served on, given or sent to an occupier and the name of the occupier cannot be ascertained by reasonable inquiry, it may be addressed to “the occupier” without naming him.

(3) For the purposes of this section, a company within the meaning of the Companies Act, 1963, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

Annotations

Modifications (not altering text):

- C5** Application of section restricted (21.09.2011) by *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011), reg. 3(7), in effect as per reg. 1(3).

Service of notices

3. ...

(7) The provisions of *Section 3* of the Principal Act shall not apply in a case to which these Regulations apply.

- C6** Application of subs. (1)(d) restricted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 16(5), S.I. No. 371 of 2001.

Intention to designate natural heritage areas.

16.— ...

(5) Notwithstanding *section 3(1)(d)* of the Principal Act, where the address of any person to whom *subsection (2)(b)* relates cannot be found after reasonable inquiry, notices and maps showing the areas to be designated shall be displayed in a conspicuous place—

(a) at one or more Garda Síochána stations, local offices of the Department of Social, Community and Family Affairs, local authority offices, local offices of the Department of Agriculture, Food and Rural Development and offices of Teagasc, which are situated within or contiguous to the area to be designated, or

(b) where in any case there is no such station or office so located, at one or more of each such station or office within the vicinity or closest to such area,

and advertisements shall be broadcast on at least one radio station broadcasting in the locality of the area concerned and be placed in at least one newspaper circulating in the area, and every such notice and advertisement shall request any person affected by the proposed designation to contact the Department of Arts, Heritage, Gaeltacht and the Islands.

Editorial Notes:

E10 Previous affecting provision: application of subs. (1)(d) restricted (26.02.1997) by *European Communities (Natural Habitats) Regulations 1997* (S.I. No. 94 of 1997), reg. 4(2)(c); revoked (21.09.2011) by *Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011), reg. 73, in effect as per reg. 1(3).

Expenses.

4.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Application of moneys received by Minister.

5.—All moneys received by the Minister under this Act shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

Annotations**Modifications (not altering text):**

C7 Functions transferred and references to “Minister for Finance” construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 3, 5 and sch. 1 part 2, in effect as per art. 1(2), subject to transitional provisions in arts. 6-9.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

(b) the statutory instruments specified in Schedule 2,

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2		
1922 to 2011 Enactments		
Number and Year (1)	Short Title (2)	Provision (3)
...
No. 39 of 1976	Wildlife Act 1976	Sections 5, 8, 9 and 76(5); Second Schedule, paragraphs 11 and 12
...

Gifts. **6.**—The Minister may accept any gift made to him for all or any of the purposes of this Act, and, subject to the terms thereof, may apply it for those purposes.

Reports. **7.**—F22[...]

Annotations

Amendments:

F22 Repealed (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 5(c), S.I. No. 371 of 2001, subject to transitional provision in s. 4.

Regulations and orders. **8.**—(1) The Minister may make regulations for prescribing any matter referred to in this Act as prescribed, provided that in so far as any such regulations provide for the charging of fees they shall only be made with the consent of the Minister for Finance.

F23[(1A) The Minister may make such regulations as appear to the Minister to be necessary or expedient to implement the provisions of the *Wildlife Acts, 1976 and 2000*.

(1B) Any regulation made by the Minister under this Act may contain such incidental or consequential provisions as appear to the Minister to be necessary or expedient for the purpose of implementing the provisions of the *Wildlife Acts, 1976 and 2000*.]

(2) Subject to *subsection (3)* of this section and to *sections 14 (5), 15 (5), 15 (6), 16 (4), 17 (3) and 17 (13)* of this Act, the Minister may by order revoke or amend an order (other than a purchase order within the meaning of *section 55* of this Act) made by him under this Act (including an order made under this subsection).

(3) Where this Act requires the Minister, before making an order or regulation under this Act, to consult any other Minister of State, the Commissioners, a planning authority or any other body, the order or regulation shall be revoked or amended by the Minister only after like consultation.

(4) Every regulation and every order made under this Act by the Minister, other than an order under *section 1 (2)* or a purchase order within the meaning of *section 55* of this Act, shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order is passed by either such House within the next twenty-one days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Annotations**Amendments:**

F23 Inserted by (31.07.2001) *Wildlife (Amendment) Act 2000* (38/2000), s. 7, S.I. No. 371 of 2001.

Modifications (not altering text):

C8 Functions transferred and references to “Minister for Finance” construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 3, 5 and sch. 1 part 2, in effect as per art. 1(2), subject to transitional provisions in arts. 6-9.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

(b) the statutory instruments specified in Schedule 2,

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

Number and Year (1)	Short Title (2)	Provision (3)
...
No. 39 of 1976	Wildlife Act 1976	Sections 5, 8, 9 and 76(5); Second Schedule, paragraphs 11 and 12
...

Editorial Notes:

E11 Power pursuant to subs. (2) exercised (19.10.2012) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 2012* (S.I. No. 402 of 2012).

E12 Power pursuant to subs. (2) exercised (17.10.2012) by *Wildlife (Wild Mammals) (Open Seasons) (Amendment) Order 2012* (S.I. No. 398 of 2012).

E13 Power pursuant to subs. (2) exercised (27.08.2008) by *Wildlife (Wild Mammals) (Open Seasons) (Amendment) (No. 2) Order 2008* (S.I. No. 346 of 2008).

E14 Power pursuant to subs. (2) exercised (14.02.2008) by *Wildlife (Wild Mammals) (Open Seasons) (Amendment) Order 2008* (S.I. No. 27 of 2008).

E15 Power pursuant to subs. (2) exercised (1.09.2005) by *Wildlife (Wild Mammals) (Open Seasons) Order 2005* (S.I. No. 550 of 2005).

E16 Power pursuant to subs. (2) exercised (9.09.1998) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1998* (S.I. No. 332 of 1998).

- E17** Power pursuant to section exercised (16.07.1996) by *Wildlife (Wild Mammals) (Open Seasons) (Amendment) Order 1996* (S.I. No. 220 of 1996).
- E18** Power pursuant to section exercised (31.08.1989) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1989* (S.I. No. 221 of 1989).
- E19** Power pursuant to section exercised (8.11.1984) by *Wildlife (Wild Birds) (Open Season) (Amendment) Order 1984* (S.I. No. 283 of 1984).
- E20** Power pursuant to section exercised (1.02.1984) by *Wildlife Act, 1976 (Birds of Prey) Regulations 1984* (S.I. No. 8 of 1984).
- E21** Power pursuant to section exercised (12.08.1982) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1982* (S.I. No. 266 of 1982).
- E22** Power pursuant to section exercised (18.07.1980) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1980* (S.I. No. 229 of 1980).
- E23** Power pursuant to section exercised (6.02.1978) by *Wildlife Act, 1976 (Acquisition of Land) Regulations 1978* (S.I. No. 29 of 1978).
- E24** Previous affecting provision: power pursuant to section exercised (for period 1.02.2011 to 28.02.2011) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 2011* (S.I. No. 39 of 2011); expired and superseded (19.10.2012) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 2012* (S.I. No. 402 of 2012), art. 3.
- E25** Previous affecting provision: power pursuant to section exercised (for period 8.12.2010 to 30.12.2010) by *Wildlife Act 1976 (Temporary Suspension of Open Season) (No. 2) (Amendment) Order 2010* (S.I. No. 613 of 2010); spent.
- E26** Previous affecting provision: power pursuant to section exercised (for period 8.12.2010 to 21.12.2010) by *Wildlife Act 1976 (Temporary Suspension of Open Season) (No. 2) (Amendment) Order 2010* (S.I. No. 598 of 2010); expired and superseded (21.12.2010) by *Wildlife Act 1976 (Temporary Suspension of Open Season) (No. 2) (Amendment) Order 2010* (S.I. No. 613 of 2010), art. 2.
- E27** Previous affecting provision: power pursuant to section exercised (for period 8.12.2010 to 14.12.2010) by *Wildlife Act 1976 (Temporary Suspension of Open Season) (No. 2) Order 2010* (S.I. No. 582 of 2010); expired and superseded (14.12.2010) by *Wildlife Act 1976 (Temporary Suspension of Open Season) (No. 2) (Amendment) Order 2010* (S.I. No. 598 of 2010), art. 3.
- E28** Previous affecting provision: power pursuant to section exercised (for period 15.01.2010 to 20.01.2010) by *Wildlife Act 1976 (Temporary Suspension of Open Season) (Amendment) Order 2010* (S.I. No. 6 of 2010); spent.
- E29** Previous affecting provision: power pursuant to section exercised (for period 6.01.2010 to 15.01.2010) by *Wildlife Act 1976 (Temporary Suspension of Open Season) Order 2010* (S.I. No. 2 of 2010); amended (15.01.2010) by *Wildlife Act 1976 (Temporary Suspension of Open Season) (Amendment) Order 2010* (S.I. No. 6 of 2010), art. 2; expired.
- E30** Previous affecting provision: power pursuant to subs. (2) exercised (3.09.2003) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 2003* (S.I. No. 394 of 2003); superseded (19.10.2012) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 2012* (S.I. No. 402 of 2012), art. 3.
- E31** Previous affecting provision: power pursuant to subs. (2) exercised (30.08.2000) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 2000* (S.I. No. 280 of 2000); superseded (5.09.2001) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 2001* (S.I. No. 428 of 2001), art. 3.
- E32** Previous affecting provision: power pursuant to subs. (2) exercised (9.09.1998) by *Wildlife (Wild Mammals) (Open Seasons) Order 1998* (S.I. No. 331 of 1998); revoked (1.09.2005) by *Wildlife (Wild Mammals) (Open Seasons) Order 2005* (S.I. No. 550 of 2005), art. 5.
- E33** Previous affecting provision: power pursuant to section exercised (31.07.1997) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1997* (S.I. No. 363 of 1997); superseded (9.09.1998) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1998* (S.I. No. 332 of 1998), art. 4.

- E34** Previous affecting provision; power pursuant to section exercised (16.07.1996) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1996* (S.I. No. 219 of 1996); superseded (31.07.1997) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1997* (S.I. No. 363 of 1997), art. 3.
- E35** Previous affecting provision: power pursuant to section exercised (22.11.1995) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) (No. 2) Order 1995* (S.I. No. 304 of 1995); superseded (31.07.1997) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1997* (S.I. No. 363 of 1997), art. 3.
- E36** Previous affecting provision: power pursuant to section exercised (15.09.1995) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1995* (S.I. No. 249 of 1995); superseded (31.07.1997) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1997* (S.I. No. 363 of 1997), art. 3.
- E37** Previous affecting provision: power pursuant to section exercised (for period 1.11.1993 to 30.11.1993) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1993* (S.I. No. 255 of 1993); spent.
- E38** Previous affecting provision: power pursuant to section exercised (for period 1.11.1992 to 30.11.1992) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1992* (S.I. No. 233 of 1992); spent.
- E39** Previous affecting provision: power pursuant to section exercised (for period 1.11.1991 to 30.11.1991) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1991* (S.I. No. 268 of 1991); spent.
- E40** Previous affecting provision: power pursuant to subs. (2) exercised (10.09.1986) by *Wildlife (Wild Mammals) (Open Seasons) (Amendment) Order 1986* (S.I. No. 306 of 1986); spent on revocation of *Wildlife (Wild Mammals) (Open Seasons) Order 1998* (S.I. No. 331 of 1998) (1.09.2005) by *Wildlife (Wild Mammals) (Open Seasons) Order 2005* (S.I. No. 550 of 2005), art. 5.
- E41** Previous affecting provision: power pursuant to section exercised (10.09.1986) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1986* (S.I. No. 307 of 1986); superseded (31.07.1997) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1997* (S.I. No. 363 of 1997), art. 3.
- E42** Previous affecting provision: power pursuant to section exercised (29.10.1985) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1985* (S.I. No. 346 of 1985); superseded (10.09.1986) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1986* (S.I. No. 307 of 1986), art. 3.
- E43** Previous affecting provision: power pursuant to section exercised (23.01.1985) by *Wildlife Act, 1976 (Section 27) (No. 2) Order 1985* (S.I. No. 12 of 1985); spent on expiry (31.01.1985) of *Wildlife Act, 1976 (Section 27) Order 1985* (S.I. No. 11 of 1985), as per art. 2.

Licences.

F24[9.—(1) The Minister may—

- (a) attach conditions to any licence granted or permit issued for any of the purposes of the *Wildlife Acts, 1976 and 2000*,
- (b) vary such conditions, and
- (c) revoke any such licence other than a licence granted by the Minister under *section 29* of the Principal Act or withdraw any such permit.

(2) Subject to *section 32(5)* of this Act, a licence granted or a permit issued by the Minister under the *Wildlife Acts, 1976 and 2000*, shall, if so expressed, operate to authorise the doing by any person who is of a class or description specified in the licence or permit of—

- (a) anything allowed to be done by the licence or permit, or
- (b) anything which is a thing so allowed to be done and is of a class or description so specified.

(3) The Minister may, with the consent of the Minister for Finance, prescribe fees payable in respect of licences granted or permits issued by the Minister under the *Wildlife Acts, 1976 and 2000*, and different fees may be prescribed for different classes of licences or permits.

(4) Regulations prescribing matters to which this section relates may provide for such incidental or related matters as are, in the opinion of the Minister, necessary to give effect to such fees.]

F25[(5) Nothing shall be allowed to be done by licence or permit that would not be allowed to be done under the provisions of the European Communities (Birds and Natural Habitats) Regulations 2011 or that would otherwise contravene the requirements and obligations of the Birds Directive or the Habitats Directive.]

Annotations

Amendments:

- F24** Substituted (31.07.2001) by *Wildlife Amendment Act 2000 (38/2000)*, s. 8, S.I. No. 371 of 2001, subject to transitional provision in s. 4.
- F25** Substituted (21.09.2011) by *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011), reg. 56(28), in effect as per reg. 1(3).

Modifications (not altering text):

- C9** Functions transferred and references to “Minister for Finance” construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 3, 5 and sch. 1 part 2, in effect as per art. 1(2), subject to transitional provisions in arts. 6-9.

3. The functions conferred on the Minister for Finance by or under the provisions of —

- (a) the enactments specified in Schedule 1, and
- (b) the statutory instruments specified in Schedule 2,

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

Number and Year (1)	Short Title (2)	Provision (3)
...
No. 39 of 1976	Wildlife Act 1976	Sections 5, 8, 9 and 76(5); Second Schedule, paragraphs 11 and 12
...

Editorial Notes:

- E44** Subs. (5) amended (21.09.2011) by *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011), reg. 56(5), in effect as per reg. 1(3); this amendment duplicates words in the substitution of the subsection by reg. 56(28) and renders the amendment redundant.
- E45** Previous affecting provision: subs. (5) inserted (18.07.2005) by *European Communities (Natural Habitats) (Amendment) Regulations 2005* (S.I. No. 378 of 2005), reg. 2(1); substituted as per F-note above.

Repeals.

10.—The enactments mentioned in the *First Schedule* to this Act are hereby repealed to the extent specified in the third column of that Schedule.

PART II

WILDLIFE CONSERVATION AND PROTECTION

CHAPTER I

*General***Annotations****Modifications (not altering text):**

- C10** Application of part restricted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 59, S.I. No. 371 of 2001.

Saver in interest of public health and safety.

59.—Nothing in *Part II*, or *section 51*, of the Principal Act shall make unlawful any thing which is done pursuant to and in accordance with a licence granted in that behalf by the Minister for the purpose of preserving public health or public safety, including air safety.

Functions of Minister in relation to wildlife.

11.—(1) It shall be a function of the Minister to secure the conservation of wildlife F26[and to promote the conservation of biological diversity].

(2) Without prejudice to the generality of *subsection (1)* of this section, the Minister may in particular do all or any of the following:

- (a) give assistance or advice to any person on any matter affecting wildlife,
- (b) where the Minister considers that the management, or supervision of the management by him or on his behalf, of any land in which he has not an interest, is desirable in the interests of wildlife, he may manage or cause to be managed, or supervise or cause to be supervised the management of the land upon such terms and subject to such conditions as may be agreed upon between him and a person having an interest in the land,

F27[(bb) encourage the management of features of the landscape which are of major importance for wild flora and fauna including birds, which include those features which by virtue of—

- (i) their linear and continuous structure, such as rivers or canals with their banks or the traditional systems of marking field boundaries, or
- (ii) their function as stepping stones, such as ponds or small woods,

are essential for the migration, dispersal and genetic exchange of wild species, for the purposes of the Habitats Directive or the Birds Directive,

(bc) take the requisite measures to maintain the population of the species referred to in Article 1 of the Birds Directive at a level that 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,

(bd) take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats by the preservation, maintenance and re-establishment of biotopes and habitats for all of the species of birds referred to in Article 1 of the Birds Directive, in particular the following measures—

(i) the creation of European Sites, or

(ii) the upkeep and management in accordance with the ecological needs of habitats inside and outside European Sites, or

(iii) the re-establishment of destroyed biotopes, and

(iv) the creation of biotopes.]

(c) enter into, and carry out, an agreement with another person to participate in a scheme, undertaking or project for the conservation of wildlife and for the purposes of such scheme, undertaking or project to perform any one or more of the functions assigned to him under this Act,

(d) make grants or loans to further projects or activities which have as their object the conservation of wildlife generally, a particular aspect of such conservation or the development and proper use of hunting amenities and resources,

(e) promote, either directly or indirectly, whether alone or in conjunction with other persons, schemes or projects for the better conservation and use of wildlife or for the prevention, reduction or removal of any damage, or source of damage, to wildlife.

(3) The Minister may, either directly or in association with or through the agency of another person—

(a) carry out or cause to be carried out research which he considers desirable for the performance of his functions under this Act,

(b) promote the knowledge and understanding of matters to which the functions assigned to him under this Act are related.

(4) Nothing in this section shall restrict, prejudice or affect the performance by the Minister for Agriculture and Fisheries of any function which could have been performed by him immediately before the commencement of this section.

F28[(5) In this section 'biological diversity' means the variability among living organisms from all sources, including terrestrial, marine and other aquatic ecosystems, and the ecological complexes of which they are part and 'diversity' includes diversity within species, between species and of ecosystems.]

Annotations

Amendments:

F26 Inserted (31.07.2001) by *Wildlife Amendment Act 2000* (38/2000), s. 9(a), S.I. No. 371 of 2001.

F27 Inserted (21.09.2011) by *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011), reg. 56(24), in effect as per reg. 1(3).

F28 Inserted (31.07.2001) by *Wildlife Amendment Act 2000* (38/2000), s. 9(b), S.I. No. 371 of 2001.

Obligations generally of Ministers of State and certain other authorities and bodies in relation to nature reserves and refuges.

12.—(1) This section applies to—

- (a) a local authority,
- (b) the Commissioners,
- (c) any other body which is—
 - (i) established by or under statute and financed wholly or partly by means of loans or grants made by a Minister of State,
 - (ii) a company (in this subsection referred to as a State-sponsored company) within the meaning of the Companies Act, 1963, in which the majority of the shares are held by or on behalf of a Minister of State,
 - (iii) a company within the meaning of the said Act in which the majority of the ordinary shares are held by a State-sponsored company, or a body established and financed in the manner specified in subparagraph (i) of this paragraph, and

as regards which there is in force for the time being a direction given for the purposes of this section by the Minister.

(2) Subject to *subsection (3)* of this section, a Minister of State other than the Minister and every authority or body to which this section applies shall—

- (a) before determining any matter or doing anything which is, in his or their opinion, or is represented by the Minister to the other Minister of State, or the authority or body to be likely or liable to affect, or to interfere with, the suitability for a nature reserve or a refuge, as may be appropriate, of land to which an establishment order, a recognition order or a designation order applies, or the management of land pursuant to and in accordance with an agreement under section 18 of this Act, consult the Minister as regards the avoidance or minimising of such effect or interference, and
- (b) take all practicable steps to avoid or minimise such effect or interference.

(3) *Subsection (2)* of this section shall not apply in relation to—

- (a) any determination made or anything done in an emergency,
- (b) F29[...]
- (c) the functions of the Board, or
- (d) the functions of the Commissioners under the Arterial Drainage Acts, 1945 and 1955.

(4) The Minister may give in relation to a body described in *subsection (1) (c)* of this section a direction for the purposes of this section and any such direction shall come into force when given and shall continue in force until cancelled by the Minister.

Annotations

Amendments:

F29 Repealed (31.07.2001) by *Wildlife Amendment Act 2000* (38/2000), s. 24(2), S.I. No. 371 of 2001.

Modifications (not altering text):

- C11** Application of subss. (2) and (3) extended (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 24(1), S.I. No. 371 of 2001.

Provisions relating to section 12 (obligations in relation to nature reserves and refuges) of Principal Act.

24.—(1) *Subsections (2) and (3) of section 12* of the Principal Act shall apply to land to which a natural heritage area order or a notice served under *section 16(2)(b)* relates in the same manner as it applies to land to which an establishment order, a recognition order or a designation order relates, or to which an agreement under *section 18* of the Principal Act relates.

...

Wildlife Advisory Council. **13.**—F30[...]

Annotations**Amendments:**

- F30** Repealed (10.04.1995) by *Heritage Act 1995* (4/1995), s. 4, commenced on enactment.

Editorial Notes:

- E46** Previous affecting provision: power pursuant to section exercised (13.03.1978) by *Wildlife Advisory Council Order 1978* (S.I. No. 79 of 1978); ceased to have effect on repeal of section.

Establishment of boards to provide or administer certain services.

14.—(1) If the Minister considers that the provision or administration of any service which under this Act he is enabled to provide or administer would be facilitated thereby, he may, with the consent of F31[**the Minister for Public Expenditure and Reform**], and after consulting such other Minister of State (if any) as the Minister considers appropriate to consult in the circumstances, by order establish a board (which shall be known by the name specified in the order) to provide, administer, or provide and administer that service on his behalf in accordance with such directives (which shall be complied with by the board) in relation to the general policy of the Minister relating to wildlife as he may give from time to time.

(2) Such of the provisions contained in the *Second Schedule* to this Act shall apply to a board established by the Minister under this section as the Minister specifies by order and for the purpose of applying any such provision in relation to a particular board as regards which the provision is so specified, any reference in that Schedule to the Board shall be construed as a reference to that particular board.

(3) The Minister may by order, if he considers it appropriate, provide that a specified board established under this section may be directed by the Minister to act on his behalf in the performance of such of his functions under this Act (other than the prosecution of an offence) as are specified in the order and the board so specified shall comply with any such direction and shall have all such powers as are necessary to put into effect any direction given to it by the Minister pursuant to the order.

(4) (a) As regards each accounting year a board established by the Minister under this section shall, within the specified period beginning immediately after the board's accounting year, make a report to the Minister of its activities during that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.

(b) The Minister shall, as regards a board established by him under this section, specify a period for the purposes of *paragraph (a)* of this subsection and the period so specified is in that paragraph referred to as the specified period.

(5) The Minister shall not revoke an order under this section establishing a board without the consent of F31[the Minister for Public Expenditure and Reform].

(6) Where the Minister revokes an order under this section the following provisions shall have effect:

(a) all property, whether real or personal (including choses-in-action), which immediately before the commencement of the order was vested in or belonged to or was held in trust or subject to conditions for the board to which the revoked order relates (in this subsection subsequently referred to as the board) and all rights, powers and privileges relating to or connected with any such property shall on the commencement of the order without any conveyance or assignment, but subject where necessary to transfer in the books of any bank, corporation or company, become and be vested in or the property of or held in trust or subject to conditions for (as the case may require) the Minister for all the interest for which the same immediately before such commencement was vested in or belonged to or was held in trust or subject to conditions for the board, but subject to all trusts, conditions and equities affecting the same and then subsisting and capable of being performed,

(b) the said property which immediately before such commencement was standing in the books of any bank or was registered in the books of any bank, corporation or company in the name of the relevant board shall, upon the request of the Minister made at any time on or after such commencement, be transferred in such books by such bank, corporation or company into the name of the Minister,

(c) any chose-in-action transferred by this section may on or after such commencement, be sued upon, recovered, or enforced by the Minister in his own name and it shall not be necessary for the Minister to give notice to the person bound by such chose-in-action of the transfer effected by this section,

(d) every debt and other liability (including unliquidated liabilities arising from torts or breaches of contract) which, immediately before such commencement is owing and unpaid or has been incurred and is undischarged by the board shall, on such commencement, become and be the debt or liability of the Minister and shall be paid or discharged by and may be recovered from and enforced against the Minister accordingly, and

(e) where, immediately before such commencement, any legal proceedings are pending to which the board is a party, the name of the Minister shall be substituted for that of the board, and the proceedings shall not abate by reason of such substitution.

(7) F32[...]

Annotations

Amendments:

F31 Substituted (6.07.2011) by *Ministers and Secretaries (Amendment) Act 2011* (10/2011), s. 59, commenced as per ss. 1(2) and 6 and S.I. No. 401 of 2011.

F32 Deleted (25.03.1999) by *Finance Act 1999* (2/1999), s. 197 and sch. 6, commenced on enactment.

Reserves and Refuges

Nature reserves on lands owned by the Minister or by the State.

15.—(1) This section applies to the following land:

- (a) land (including land covered by inland waters) owned by the State, including land in which the Minister has (whether jointly or severally) any interest,
- (b) any foreshore which belongs to the State,
- (c) land, other than foreshore mentioned in paragraph (b) of this subsection, which forms the seabed under the territorial seas of the State.

(2) Where, after consultation with the Minister for Agriculture and Fisheries, the Minister for Transport and Power and the Commissioners, the Minister is satisfied that—

F33[(a) land to which this section applies—

- (i) includes the habitat or forms, or is capable of being made to form, the habitat or part of the habitat of one or more species or community, being a species or community which is of scientific interest, or
- (ii) includes or forms an ecosystem, or part of an ecosystem, which is of scientific interest, or
- (iii) contains features of geological, geomorphological or other natural interest,

F34[or,

(iv) has features of the landscape which are of major importance for wild flora and fauna including birds, which include those features which by virtue of—

(I) their linear and continuous structure, such as rivers or canals with their banks or the traditional systems of marking field boundaries, or

(II) their function as stepping stones, such as ponds or small woods, are essential for the migration, dispersal and genetic exchange of wild species, for the purposes of the Habitats Directive or the Birds Directive, or

(III) their importance for the maintenance of the population of the species referred to in Article 1 of the Birds Directive at a level that corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or for adapting the population of these species to that level, or

(IV) their importance for the preservation, maintenance or re-establishment of a sufficient diversity and area of habitats by the preservation, maintenance and re-establishment of biotopes and habitats for all of the species of birds referred to in Article 1 of the Birds Directive, in particular for

(A) the creation of European Sites, or

(B) the upkeep and management in accordance with the ecological needs of habitats inside and outside European Sites, or

(C) the re-establishment of destroyed biotopes, and

(D) the creation of biotopes.]

and that in the case of such habitat or ecosystem, or such part of the ecosystem, or geological, geomorphological or other natural interest is likely to benefit if measures are taken for its protection,]

(b) it is desirable to establish the land as a nature reserve, and

(c) the proper management of the land as a nature reserve would not be precluded by any interest of any other person (including a person who is an owner with the Minister) in or over the land,

he may by order (in this Act referred to as an establishment order) declare that the land shall constitute and that there shall be established by the order a nature reserve: provided that,

(i) in case the Commissioners have an interest in the land, the order shall be made by the Minister only with the concurrence of the Commissioners, and

(ii) in case the Minister's interest in the land is held by him jointly with another person, the Minister in addition to being satisfied as regards the matters aforesaid shall, before making an establishment order in relation to the land, be satisfied that the fact that the other person has an interest in the land will not inhibit the proper management of the land by the Minister as a nature reserve.

(3) An establishment order shall specify the reason why, and shall indicate the objectives for which, the nature reserve is being established by the Minister.

(4) The Minister shall manage the land to which an establishment order relates so as to secure, as best as may be, the objectives indicated in the order having regard to and in accordance with the general protection of the natural environment.

(5) The Minister shall not amend an establishment order unless he considers that the objectives, as regards which the relevant nature reserve was established, require revision because of changes in the features F35[, characteristics or boundaries] of the reserve or in any other circumstance which affects the reserve.

(6) The Minister shall not revoke an establishment order unless he considers that it is no longer practicable or is no longer desirable to maintain the nature reserve established by the order.

(7) The Minister shall, as soon as may be after it is made, cause a copy of an order under this section to be sent to the Commissioners, to the Board and to any planning authority within whose area the land comprised in the nature reserve, or any part thereof, is situate.

Annotations

Amendments:

F33 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000*(38/2000), s. 26(a), S.I. No. 371 of 2001.

F34 Inserted (21.09.2011) by *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011), reg. 56(25).

F35 Substituted (31.07.2000) by *Wildlife (Amendment) Act* (38/2000), s. 26(b).

Modifications (not altering text):

C12 Functions transferred and "Department of" and "Minister for Communications" construed (31.03.1987) by *Communications (Transfer of Departmental Administration and Ministerial Functions) Order 1987* (S.I. No. 91 of 1987), arts. 3, 4 and sch. part IV (11), in effect as per art. 1(2), subject to transitional provisions in arts. 5-9. Note: name of Department of the Marine most recently changed to Communications, Climate Action and Environment (23.07.2016) by *Communications, Energy and Natural Resources (Alteration of Name of Department and Title of Minister) Order 2016* (S.I. No. 421 of 2016).

3. (1) The administration and business in connection with the exercise, performance or execution of any functions transferred by Article 4 of this Order are hereby transferred to the Department of the Marine.

(2) References to the Department of Communications contained in any Act or instrument made thereunder and relating to any administration and business transferred by paragraph (1) of this Article shall, on and after the commencement of this Order, be construed as references to the Department of the Marine.

4. (1) The functions vested in the Minister for Communications— ...

(c) by or under any of the Statutes mentioned in the third column of Part IV of the Schedule to this Order at any reference number of any statute mentioned in the second column of that Part of that Schedule at that reference number

are hereby transferred to the Minister for the Marine.

(2) References to the Minister for Communications contained in any Act or instrument made thereunder and relating to any functions transferred by this Article shall, on and after the commencement of this Order, be construed as references to the Minister for the Marine.

...

SCHEDULE

PART IV

Ref. No.	Statute	Provisions of the Statutes mentioned in the second column, functions under which are transferred to the Minister for the Marine
(1)	(2)	(3)
...
11.	Wildlife Act 1976	Section 15 (2), in so far as it relates to consultation with the Minister
...

Editorial Notes:

- E47** Power pursuant to section exercised (28.10.1999) by *Nature Reserve (Clochar na gCon) Establishment Order 1999* (S.I. No. 310 of 1999), in effect as per art. 1(2).
- E47** Power pursuant to section exercised (17.05.1994) by *Nature Reserve (Cummeragh River Bog) Establishment Order 1994* (S.I. No. 116 of 1994), in effect as per art. 1(2).
- E50** Power pursuant to section exercised (29.03.1994) by *Nature Reserve (Knocksink Wood) Establishment Order 1994* (S.I. No. 58 of 1994), in effect as per art. 1(2).
- E51** Power pursuant to section exercised (22.11.1993) by *Nature Reserve (Kilcolman Bog) Recognition Order 1993* (S.I. No. 315 of 1993), in effect as per art. 1(2).
- E52** Power pursuant to section exercised (22.11.1993) by *Nature Reserve (Kilcolman Bog) Establishment Order 1993* (S.I. No. 314 of 1993), in effect as per art. 1(2).
- E53** Power pursuant to section exercised (7.12.1992) by *Nature Reserve (Scragh Bog) Establishment Order 1992* (S.I. No. 350 of 1992), in effect as per art. 1(2).
- E54** Power pursuant to section exercised (20.07.1991) by *Nature Reserve (Redwood Bog) Establishment Order 1991* (S.I. No. 173 of 1991), in effect as per art. 1(2).
- E55** Power pursuant to section exercised (20.07.1991) by *Nature Reserve (Glengarriff) Establishment Order 1991* (S.I. No. 172 of 1991), in effect as per art. 1(2).
- E56** Power pursuant to section exercised (20.07.1991) by *Nature Reserve (Leam West) Establishment Order 1991* (S.I. No. 171 of 1991), in effect as per art. 1(2).

- E57** Power pursuant to section exercised (29.01.1990) by *Nature Reserve (Castlemaine Harbour) Establishment Order 1990* (S.I. No. 10 of 1990), in effect as per art. 1(2).
- E58** Power pursuant to section exercised (29.01.1990) by *Nature Reserve (Meenachullion) Establishment Order 1990* (S.I. No. 9 of 1990), in effect as per art. 1(2).
- E59** Power pursuant to section exercised (29.01.1990) by *Nature Reserve (Balleyteige Burrow) Establishment Order 1990* (S.I. No. 8 of 1990), in effect as per art. 1(2).
- E60** Power pursuant to section exercised (29.01.1990) by *Nature Reserve (Knockmoyle/Sheskin) Establishment Order 1990* (S.I. No. 6 of 1990), in effect as per art. 1(2).
- E61** Power pursuant to section exercised (29.01.1990) by *Nature Reserve (Easkey Bog) Establishment Order 1990* (S.I. No. 5 of 1990), in effect as per art. 1(2).
- E62** Power pursuant to section exercised (1.06.1989) by *Nature Reserve (Tearaght Island) Establishment Order 1989* (S.I. No. 108 of 1989), in effect as per art. 1(2).
- E63** Power pursuant to section exercised (1.06.1989) by *Nature Reserve (Knockomagh Wood) Establishment Order 1989* (S.I. No. 107 of 1989), in effect as per art. 1(2).
- E64** Power pursuant to section exercised (1.06.1989) by *Nature Reserve (Tralee Bay) Establishment Order 1989* (S.I. No. 106 of 1989), in effect as per art. 1(2).
- E65** Power pursuant to section exercised (10.10.1988) by *Nature Reserve (Great Skellig) Establishment Order 1988* (S.I. No. 235 of 1988), in effect as per art. 1(2).
- E66** Power pursuant to section exercised (10.10.1988) by *Nature Reserve (Fiddown Island) Establishment Order 1988* (S.I. No. 234 of 1988), in effect as per art. 1(2).
- E67** Power pursuant to section exercised (10.10.1988) by *Nature Reserve (Baldoyle Estuary) Establishment Order 1988* (S.I. No. 233 of 1988), in effect as per art. 1(2).
- E68** Power pursuant to section exercised (10.10.1988) by *Nature Reserve (North Bull Island) Establishment Order 1988* (S.I. No. 231 of 1988), in effect as per art. 1(2).
- E69** Power pursuant to section exercised (30.04.1988) by *Nature Reserve (Lough Nambrackdarrig) Establishment Order 1988* (S.I. No. 73 of 1988), in effect as per art. 1(2).
- E70** Power pursuant to section exercised (30.04.1988) by *Nature Reserve (Lough Yganavan) Establishment Order 1988* (S.I. No. 72 of 1988), in effect as per art. 1(2).
- E71** Power pursuant to section exercised (30.04.1988) by *Nature Reserve (Rogerstown Estuary) Establishment Order 1988* (S.I. No. 71 of 1988), in effect as per art. 1(2).
- E72** Power pursuant to section exercised (30.04.1988) by *Nature Reserve (Derkmore Wood) Establishment Order 1988* (S.I. No. 70 of 1988), in effect as per art. 1(2).
- E73** Power pursuant to section exercised (30.04.1988) by *Nature Reserve (Glenealo Valley) Establishment Order 1988* (S.I. No. 69 of 1988), in effect as per art. 1(2).
- E74** Power pursuant to section exercised (30.04.1988) by *Nature Reserve (Glendalough) Establishment Order 1988* (S.I. No. 68 of 1988), in effect as per art. 1(2).
- E75** Power pursuant to section exercised (12.11.1987) by *Nature Reserve (Raheenmore Bog) Establishment Order 1987* (S.I. No. 280 of 1987), in effect as per art. 1(2).
- E76** Power pursuant to section exercised (12.11.1987) by *Nature Reserve (Ballyteige Burrow) Establishment Order 1987* (S.I. No. 279 of 1987), in effect as per art. 1(2).
- E77** Power pursuant to section exercised (23.09.1987) by *Nature Reserve (Puffin Island) Establishment Order 1987* (S.I. No. 228 of 1987), in effect as per art. 1(2).
- E78** Power pursuant to section exercised (23.09.1987) by *Nature Reserve (Lough Barra Bog) Establishment Order 1987* (S.I. No. 227 of 1987), in effect as per art. 1(2).

- E79** Power pursuant to section exercised (23.09.1987) by *Nature Reserve (Clara Bog) Establishment Order 1987* (S.I. No. 226 of 1987), in effect as per art. 1(2).
- E80** Power pursuant to section exercised (29.12.1986) by *Nature Reserve (Mount Brandon) Establishment Order 1986* (S.I. No. 420 of 1986), in effect as per art. 1(2).
- E81** Power pursuant to section exercised (29.12.1986) by *Nature Reserve (Eirk Bog) Establishment Order 1986* (S.I. No. 419 of 1986), in effect as per art. 1(2).
- E82** Power pursuant to section exercised (29.12.1986) by *Nature Reserve (Ballyteige) Establishment Order 1986* (S.I. No. 418 of 1986), in effect as per art. 1(2).
- E83** Power pursuant to section exercised (29.12.1986) by *Nature Reserve Ballygilgan (Lissadell) Establishment Order 1986* (S.I. No. 417 of 1986), in effect as per art. 1(2).
- E84** Power pursuant to section exercised (29.12.1986) by *Nature Reserve (Owenboy) Establishment Order 1986* (S.I. No. 416 of 1986), in effect as per art. 1(2).
- E85** Power pursuant to section exercised (29.12.1986) by *Nature Reserve (Knockmoyle/Sheskin) Establishment Order 1986* (S.I. No. 415 of 1986), in effect as per art. 1(2).
- E86** Power pursuant to section exercised (29.12.1986) by *Nature Reserve (Pollardstown Fen) Establishment Order 1986* (S.I. No. 414 of 1986), in effect as per art. 1(2).
- E87** Power pursuant to section exercised (14.11.1986) by *Nature Reserve (Keelhilla, Slievecarran) Establishment Order 1986* (S.I. No. 346 of 1986), in effect as per art. 1(2).
- E88** Power pursuant to section exercised (14.11.1986) by *Nature Reserve (Ballyarr Wood) Establishment Order 1986* (S.I. No. 345 of 1986), in effect as per art. 1(2).
- E89** Power pursuant to section exercised (14.11.1986) by *Nature Reserve (Duntally Wood) Establishment Order 1986* (S.I. No. 344 of 1986), in effect as per art. 1(2).
- E90** Power pursuant to section exercised (14.11.1986) by *Nature Reserve (Rathmullan Wood) Establishment Order 1986* (S.I. No. 343 of 1986), in effect as per art. 1(2).
- E91** Power pursuant to section exercised (16.12.1985) by *Nature Reserve (Timahoe Esker) Establishment Order 1985* (S.I. No. 383 of 1985), in effect as per art. 1(2).
- E92** Power pursuant to section exercised (16.12.1985) by *Nature Reserve (Slieve Bloom Mountains) Establishment Order 1985* (S.I. No. 382 of 1985), in effect as per art. 1(2).
- E93** Power pursuant to subs. (2) exercised (16.12.1985) by *Nature Reserve (Capel Island and Knockadoon Head) Establishment Order 1985* (S.I. No. 381 of 1985), in effect as per art. 1(2).
- E94** Power pursuant to section exercised (16.12.1985) by *Nature Reserve (Richmond Esker) Establishment Order 1985* (S.I. No. 380 of 1985), in effect as per art. 1(2).
- E95** Power pursuant to section exercised (16.12.1985) by *Nature Reserve (Dromore) Establishment Order 1985* (S.I. No. 379 of 1985), in effect as per art. 1(2).
- E96** Power pursuant to section exercised (31.12.1984) by *Nature Reserve (Pettigo Plateau) Establishment Order 1984* (S.I. No. 334 of 1984), in effect as per art. 1(2).
- E97** Power pursuant to section exercised (31.12.1984) by *Nature Reserve (Oldhead Wood) Establishment Order 1984* (S.I. No. 333 of 1984), in effect as per art. 1(2).
- E98** Power pursuant to section exercised (29.12.1983) by *Nature Reserve (Coole-Garryland) Establishment Order 1983* (S.I. No. 379 of 1983), in effect as per art. 1(2).
- E99** Power pursuant to section exercised (29.12.1983) by *Nature Reserve (Ballynastaig Wood) Establishment Order 1983* (S.I. No. 378 of 1983), in effect as per art. 1(2).
- E100** Power pursuant to section exercised (29.12.1983) by *Nature Reserve (Pollnacknockaun Wood) Establishment Order 1983* (S.I. No. 377 of 1983), in effect as per art. 1(2).

- E101** Power pursuant to section exercised (29.12.1983) by *Nature Reserve (Derrycrag Wood) Establishment Order 1983* (S.I. No. 376 of 1983), in effect as per art. 1(2).
- E102** Power pursuant to section exercised (29.12.1983) by *Nature Reserve (Rosturra Wood) Establishment Order 1983* (S.I. No. 375 of 1983), in effect as per art. 1(2).
- E103** Power pursuant to section exercised (29.12.1983) by *Nature Reserve (Vale of Clara) Establishment Order 1983* (S.I. No. 374 of 1983), in effect as per art. 1(2).
- E104** Power pursuant to section exercised (31.07.1983) by *Nature Reserve (The Raven) Establishment Order 1983* (S.I. No. 200 of 1983), in effect as per art. 1(2).
- E105** Power pursuant to section exercised (31.12.1982) by *Nature Reserve (Deputy's Pass) Establishment Order 1982* (S.I. No. 381 of 1982), in effect as per art. 1(2).
- E106** Power pursuant to section exercised (31.12.1982) by *Nature Reserve (Uragh Wood) Establishment Order 1982* (S.I. No. 380 of 1982), in effect as per art. 1(2).
- E107** Power pursuant to section exercised (31.12.1982) by *Nature Reserve (Coolacurragh Wood) Establishment Order 1982* (S.I. No. 379 of 1982), in effect as per art. 1(2).
- E108** Power pursuant to section exercised (31.12.1982) by *Nature Reserve (Grantstown Wood and Granston Lough) Establishment Order 1982* (S.I. No. 378 of 1982), in effect as per art. 1(2).
- E109** Power pursuant to section exercised (3.06.1981) by *Nature Reserve (Lough Hyne) Establishment Order 1981* (S.I. No. 206 of 1981).
- E110** Power pursuant to section exercised (3.06.1981) by *Nature Reserve (Wexford Wildfowl Reserve) Establishment Order 1981* (S.I. No. 205 of 1981).
- E111** Power pursuant to section exercised (18.12.1980) by *Nature Reserve (Garryrickin) Establishment Order 1980* (S.I. No. 389 of 1980).
- E112** Power pursuant to section exercised (18.12.1980) by *Nature Reserve (Kyleadohir) Establishment Order 1980* (S.I. No. 388 of 1980).
- E113** Power pursuant to section exercised (18.12.1980) by *Nature Reserve (Caher (Murphy)) Establishment Order 1980* (S.I. No. 387 of 1980).
- E114** Power pursuant to section exercised (18.12.1980) by *Nature Reserve (Ballykeefe) Establishment Order 1980* (S.I. No. 386 of 1980).
- E115** Power pursuant to section exercised (13.06.1980) by *Nature Reserve (Glen of the Downs) Establishment Order 1980* (S.I. No. 178 of 1980).
- E116** Power pursuant to section exercised (13.06.1980) by *Nature Reserve (Derryclare) Establishment Order 1980* (S.I. No. 177 of 1980).
- E118** Previous affecting provision: certain developments carried out on nature reserves established under section designated exempted developments for purposes of *Local Government (Planning and Development) Acts 1963 to 1993* (15.06.1994) by *Local Government (Planning and Development) Regulations 1994* (S.I. No. 86 of 1994), regs. 9 and 10 and sch. 2 part I class 32(b), in effect as per reg. 2(2); revoked (11.03.2002) by *Planning and Development Act, 2000 (Commencement) (No. 3) Order 2001* (S.I. No. 599 of 2001), art. 6.

Nature reserves on land other than land to which section 15 applies.

- 16.—(1)** Where a person who is the occupier of land satisfies the Minister that—
- (a) the land includes a habitat F36[or forms, or is capable of being made to form, a habitat] or part of a habitat or an ecosystem F36[or contains features of geological, geomorphological or other natural interest] described in paragraph (a) of section 15 (2) of this Act, F36[as amended by this Act,]
- (b) the interest of the person in or over the land is such as to enable the person to establish and manage a nature reserve on the land, and

(c) the person can, in accordance with any conditions which the Minister sees fit to impose, use or manage the land so as to establish and maintain, or maintain, as may be appropriate, a nature reserve on the land,

then, subject to *subsection (2)* of this section, the Minister may, by order (in this Act referred to as a recognition order) recognise the land as a nature reserve and the recognition shall continue for so long as the order is in force.

(2) Before making a recognition order the Minister shall consult the Minister for Agriculture and Fisheries, the Minister for Transport and Power, the Commissioners and any planning authority within whose area the land to which the proposed order relates, or any part of such land, is situate.

(3) A recognition order shall state the Minister's reason for recognising the land to which the order relates as a nature reserve and indicate the objectives for which the land is to be used or managed as a nature reserve.

F37[(3A) The Minister shall not amend a recognition order unless the Minister considers that the objectives, as regards which the relevant nature reserve was recognised, require revision because of changes in the features, characteristics or boundaries of the reserve, or because of any other circumstance which in the Minister's opinion affects the reserve.]

(4) The Minister shall not revoke a recognition order unless he considers that—

(a) the objectives indicated in the order have not been attained or are not being properly maintained, or

(b) for any other reason, it is no longer appropriate for him to continue to recognise as a nature reserve, by virtue of the order, the land to which the order relates.

(5) The Minister shall, as soon as may be after it is made, cause a copy of an order under this section to be sent to the Commissioners, to the Board and to any planning authority within whose area the land to which the order relates, or any part of such land, is situate.

Annotations

Amendments:

F36 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 27(a), S.I. No. 371 of 2001.

F37 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 27(b), S.I. No. 371 of 2001.

Editorial Notes:

E119 Power pursuant to section exercised (20.12.2018) by *Nature Reserve (Newcastle Lough) Recognition Order 2018* (S.I. No. 602 of 2018).

E120 Power pursuant to section exercised (4.03.2004) by *Nature Reserve (Fenor Bog) Recognition Order 2004* (S.I. No. 86 of 2004).

E121 Power pursuant to section exercised (29.01.1990) by *Nature Reserve (Sheheree Bog) Recognition Order 1990* (S.I. No. 7 of 1990), in effect as per art. 1(2).

E122 Power pursuant to section exercised (1.06.1989) by *Nature Reserve (Derrycunihy Wood) Recognition Order 1989* (S.I. No. 111 of 1989), in effect as per art. 1(2).

E123 Power pursuant to section exercised (1.06.1989) by *Nature Reserve (Derrymore Island) Recognition Order 1989* (S.I. No. 110 of 1989), in effect as per art. 1(2).

E124 Power pursuant to section exercised (1.06.1989) by *Nature Reserve (Tearaght Island) Recognition Order 1989* (S.I. No. 109 of 1989).

- E125** Power pursuant to section exercised (10.10.1988) by *Nature Reserve (Little Skellig) Recognition Order 1988* (S.I. No. 236 of 1988), in effect as per art. 1(2).
- E126** Power pursuant to section exercised (10.10.1988) by *Nature Reserve (North Bull Island) Recognition Order 1988* (S.I. No. 232 of 1988), in effect as per art. 1(2).
- E127** Power pursuant to section exercised (23.09.1987) by *Nature Reserve (Mongan Bog) Recognition Order 1987* (S.I. No. 230 of 1987), in effect as per art. 1(2).
- E128** Power pursuant to section exercised (23.09.1987) by *Nature Reserve (Puffin Island) Recognition Order 1987* (S.I. No. 229 of 1987), in effect as per art. 1(2).
- E129** Power pursuant to section exercised (16.12.1985) by *Nature Reserve (Capel Island and Knockadoon Head) Recognition Order 1985* (S.I. No. 384 of 1985), in effect as per art. 1(2).

Refuges for
fauna.

17.—(1) Where the Minister considers that a particular species, or particular species, of F38[**either or both fauna and flora**] should be specially protected on any land which is, or is contiguous to, a habitat of the species, F39[**or that land has features of the landscape which are of major importance for wild flora and fauna including birds, which include those features which by virtue of:**

- (a) **their linear and continuous structure, such as rivers or canals with their banks or the traditional systems of marking field boundaries, or**
- (b) **their function as stepping stones, such as ponds or small woods,**

are essential for the migration, dispersal and genetic exchange of wild species, for the purposes of the Habitats Directive or the Birds Directive,] then, subject to *subsection (5)* of this section, he may publish in the *Iris Oifigiúil* and in at least one newspaper circulating in the locality in which the land is situate a notice of his intention to make an order (in this Act referred to as a designation order) designating the land as a refuge for such F38[**fauna and flora**].

(2) Before publishing a notice pursuant to this section, the Minister shall—

- (a) consult the Minister for Agriculture and Fisheries, the Minister for Transport and Power, the Commissioners and any planning authority in whose area the land to which the notice relates, or any part of such land, is situate, and
- (b) serve on the owner or occupier of such land notice of the particulars to be contained in the notice he proposes to so publish.

(3) Where the Minister proposes to amend a designation order he shall publish in the *Iris Oifigiúil* and in at least one newspaper circulating in the locality in which the land to which the designation order applies is situate a notice of his intention to do so.

(4) A notice published pursuant to this section shall indicate F40[**every species of fauna and flora**] which the Minister proposes by the provisions of the proposed order to which the notice relates to protect, the land to which the proposed designation order or amending order, as the case may be, will apply and the protective measures which he proposes to include in the proposed order, including any measures he proposes to take for the protection of the habitat requirements of such F40[**fauna and flora**].

(5) The Minister shall not include in a notice published pursuant to this section any reference to a species of fish or aquatic invertebrate animal without the prior concurrence of the Minister for Agriculture and Fisheries.

(6) Not later than two months after publication in the *Iris Oifigiúil* pursuant to *subsection (1)* of this section of a notice, the occupier of any land to which the notice relates, or any person claiming to have or to be entitled to an interest in or over the

land or part thereof, who objects to the making of the proposed order on the grounds that it will interfere with such interest, may give, in the manner specified in the said notice, notice to the Minister giving particulars of the claim, and if he does so, shall furnish to the Minister with the notice particulars of the grounds of objection.

(7) Any person, other than a person mentioned in *subsection (6)* of this section or a planning authority, who claims that the making of a proposed order to which a notice published pursuant to this section relates would, if made, be detrimental to him may, not later than two months after the publication of the notice in the *Iris Oifigiúil*, give notice in writing giving particulars of his claim to the Minister and, if he does so, shall furnish to the Minister with the notice particulars of the grounds of objection.

(8) The planning authority within whose area is situate the land, or any part thereof, to which a proposed order under this section will, if made, relate, may, if they object to the proposal, not later than two months after the publication in the *Iris Oifigiúil* pursuant to *subsection (1)* of this section, give notice in writing to that effect to the Minister and, if they do so, they shall furnish to the Minister with the notice particulars of the grounds of objection.

(9) The Minister, after considering any objection duly made in relation to a proposed designation order or to a proposed amendment of a designation order, may if he thinks fit, make in relation to the land specified in the notice published pursuant to this section or any part of such land whichever of the following is appropriate having regard to the terms of the notice:

(a) a designation order designating that land, or any part thereof, as, and establishing thereon, a refuge for all or any of the fauna F41[or flora] indicated in the notice, or

(b) an appropriate order under *section 8* of this Act amending a designation order,

and the order may include such provisions as the Minister thinks fit which relate to protective measures so specified.

(10) Subject to *subsection (12)* of this section, a person who has an interest in or over land specified in a notice published pursuant to this section shall be entitled to be paid compensation by the Minister in respect of any diminution in the value of his interest in or over the land consequent upon the making of the order to which the notice relates and any claim for payment of compensation shall, in default of agreement, be determined by arbitration under the Act of 1919, as amended by subsequent enactments, in all respects as if the claim arose in relation to compulsory acquisition of land.

(11) Subject to *subsection (12)* of this section, any person other than a person mentioned in *subsection (10)* of this section who, in consequence of the making of an order under this section, has had to incur expense or who has suffered financial loss or any inconvenience or other disadvantage shall be entitled to be paid by the Minister such amount (if any) of compensation as the Minister considers is reasonable.

(12) Any compensation under this section shall be assessed and payable only in respect of diminution in value, loss or disadvantage arising from the measures contained in the relevant order for the protection of the habitat requirements of the fauna F42[or flora] to which the order relates.

(13) The Minister shall not revoke a designation order unless he considers that it is no longer practicable or is no longer desirable to maintain the refuge established by the order.

(14) The Minister shall, as soon as may be after it is made, cause a copy of an order under this section to be sent to the Commissioners, to the Board and to any planning authority within whose area the land to which the order relates, or any part of such land, is situate.

(15) Any person who contravenes a designation order shall be guilty of an offence.

Annotations

Amendments:

- F38** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000*, (38/2000) s. 28(a), S.I. No. 371 of 2001.
- F39** Inserted (21.09.2011) by *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011), reg. 56(26), in effect as per reg. 1(3).
- F40** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000*, (38/2000) s. 28(b), S.I. No. 371 of 2001.
- F41** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000*, (38/2000) s. 28(c), S.I. No. 371 of 2001.
- F42** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000*, (38/2000) s. 28(d), S.I. No. 371 of 2001.

Editorial Notes:

- E130** Power pursuant to section exercised (25.09.1991) by *Refuge For Fauna (Cow Rock) Designation Order 1991* (S.I. No. 237 of 1991), in effect as per art. 1(2).
- E131** Power pursuant to section exercised (25.09.1991) by *Refuge For Fauna (Bull Rock) Designation Order 1991* (S.I. No. 236 of 1991), in effect as per art. 1(2).
- E132** Power pursuant to section exercised (6.03.1989) by *Refuge For Fauna (Old Head of Kinsale) Designation Order 1989* (S.I. No. 11 of 1989), in effect as per art. 1(2).
- E133** Power pursuant to section exercised (12.06.1988) by *Refuge For Fauna (Rockabill Island) Designation Order 1988* (S.I. No. 100 of 1988), in effect as per art. 1(2).
- E134** Power pursuant to section exercised (12.06.1988) by *Refuge For Fauna (Horn Head) Designation Order 1988* (S.I. No. 99 of 1988), in effect as per art. 1(2).
- E135** Power pursuant to section exercised (12.06.1988) by *Refuge For Fauna (Cliffs of Moher) Designation Order 1988* (S.I. No. 98 of 1988), in effect as per art. 1(2).
- E136** Power pursuant to section exercised (12.03.1988) by *Refuge For Fauna (Lady's Island) Designation Order 1988* (S.I. No. 23 of 1988), in effect as per art. 1(2).

Agreement as to user and management of land.

18.—(1) The Minister or, with his prior approval, any other person, may enter into an agreement with a person having an interest in or over land ensuring that the management of the land shall be conducted in a manner (to be specified in the agreement) which will not impair wildlife or its conservation.

(2) An agreement under this section shall be entered into only after consultation with the Minister for Agriculture and Fisheries, the Commissioners and any planning authority in whose area the relevant land or any part thereof is situate.

(3) An agreement under this section may provide for the payment by the Minister or any other person who is a party to the agreement of consideration, either by way of a single payment or by way of payment of an annual sum, to a person having, or claiming to be entitled to, an interest in or over the land to which the agreement relates.

(4) An agreement under this section may provide that the agreement shall be enforceable against persons deriving title to the land under the person having the interest in or over the land, and, in case such provision is included in the agreement, subject, where appropriate, to the agreement's being registered under section 69 of the Registration of Title Act, 1964, as amended by section 66 of this Act, and to compliance with any rules made under section 126 of that Act which are relevant, it

shall be so enforceable in respect of the person's former interest as if the Minister, or the person who with the Minister's approval entered into the agreement, was possessed of adjacent land and as if the agreement had been expressed to be made for the benefit of that land.

(5) The Commissioners, the Board and any planning authority within whose area the land, or any part of the land, to which an agreement made under this section relates, shall be notified by the Minister of the agreement, and if the agreement is terminated and the Minister is aware thereof, of the termination.

(6) Where an agreement under this section to which the Minister is not a party is terminated, the parties to the agreement shall cause notice of the termination to be given to the Minister.

(7) In this section "management" in relation to land means use of the land for agriculture or forestry, the carrying out of works on, in or under the land, the making of any change in the physical, topographical or ecological nature or characteristics of the land and the use of the land for educational or recreational purposes.

Annotations

Editorial Notes:

E137 Previous affecting provision: provision made for Minister to enter into management agreement in accordance with section (26.02.1997) by *European Communities (Natural Habitats) Regulations 1997* (S.I. No. 94 of 1997), reg. 12; revoked (21.09.2011) by *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011), art. 73(1), in effect as per art. 1(3).

CHAPTER III

Protection of wild birds, protected animals and flora

Protection of wild birds. **19.**—Wild birds and their nests and eggs, other than wild birds of the species mentioned in the Third Schedule to this Act, shall be protected.

Protection of fauna (other than protected wild birds). **20.**—Animals which are of a species of fauna in relation to which *section 23* of this Act applies shall be protected.

Annotations

Editorial Notes:

E138 The Minister may grant a license to permit derogation from compliance with the requirements of this section as provided (4.10.2010) by *European Communities (Birds and Natural Habitats) (Restrictions on Use of Poisoned Bait) Regulations 2010* (S.I. No. 481 of 2010), reg. 5.

Protection of flora. **21.**—(1) Where the Minister considers that a particular species, or particular species, of flora should be protected, he may by order declare the species to be protected either throughout the State or in a particular area or areas thereof and an order made under this section shall apply—

(a) in case the order declares a species of flora protected throughout the State, as regards any specimen of that species in every place in the State,

(b) in case the order declares a species of flora protected in a particular area or areas of the State, as regards any specimen of that species in every place in an area specified in the order;

provided that in case the Minister proposes to make an order under this section declaring a species of flora protected in a particular area or in particular areas of the State, he shall, before making the order, consult any planning authority in relation to whose area, or any part of such area, the proposed order would, if made, apply.

(2) The Minister shall, as soon as may be after it is made, cause a copy of an order under this section to be sent to the Board and to any planning authority in relation to whose area, or any part of such area, the order applies.

(3) Subject to *subsection (5)* of this section, a person shall not, save under and in accordance with a licence granted by the Minister under this section—

F43[(a) cut, pick, collect, uproot or otherwise take, injure, damage, or destroy any specimen to which this section applies or the flowers, roots, seeds, spores or other part of such specimen,

F44[(b) purchase, sell or exchange, transport, keep for sale or exchange, offer for sale or exchange or be in possession of any such specimen or any specimen of a species listed in Annex IV(B) of Council Directive 92/43/EEC of 21 May 1992 and including any amendments that shall be made thereto, whether alive or dead or the flowers, roots, seeds, spores or other part, product or derivative thereof.]]

(c) wilfully alter, damage, destroy or interfere with the habitat or environment of any species of flora to which an order under this section for the time being applies.

(4) A person who contravenes *subsection (3)* of this section shall be guilty of an offence.

(5) The Minister may grant a licence to a person for such scientific, educational or other purposes as shall be specified in the licence to do any or all of the following:

F45[(a) to cut, pick, collect, uproot or otherwise take flora of a species specified in the licence and which is of a species to which an order under this section for the time being applies or the flowers, roots, seeds, spores or other part of a specimen of the species so specified,]

(b) to alter or otherwise interfere with the habitat or environment of any such specimen.

(6) Where in any proceedings for an offence under this section it is proved by the prosecutor that the person accused of the offence—

F46[(a) sold a plant whether alive or dead or the flowers, roots, seeds, spores or any part, product or derivative of a plant, which is of the same species as the plant, flowers, roots, seeds, spores or any part, product or derivative of a plant, as the case may be, to which the alleged offence relates, and

(b) claimed, either expressly or by implication and whether by advertising or otherwise, that the plant, flowers, roots, seeds, spores or any other part, product or derivative sold came from or was wholly or partly grown in a particular place, and the place is in an area to which an order under this section applied at the time when the alleged offence was committed,]

it shall be assumed, until the contrary is shown by the defendant, that the sale was in contravention of *subsection (3)* of this section.

(7) In any proceedings for an offence under this section, it shall be a defence for the defendant to show that the plant, flowers, roots F47[, seeds or spores] or other thing to which the alleged offence relates was lawfully imported.

(8) A person shall not be convicted under this section and under section 46 of the Local Government (Planning and Development) Act, 1963, as amended by section 40 (b) of the Local Government (Planning and Development) Act, 1976, in respect of the same act.

F48[(8A) In order to control the trade and collection of wild flora the Minister may make regulations providing that a person shall not, save under and in accordance with a licence granted in that behalf by the Minister and on payment to the Minister of the prescribed fee (if any), cut, pick, collect, uproot or otherwise take, injure, damage, or destroy any specimen of a species of flora which is of a species specified in the regulations or the flowers, roots, seeds, spores or other part of such specimen or cause to be cut, picked, collected, uprooted or otherwise taken, injured, damaged or destroyed any such specimen.

(8B) Where the Minister is satisfied that it is in the interests of the conservation of any species of wild flora so to do, the Minister may be regulations prohibit, or control in such manner as the Minister considers appropriate and specify in the regulations, the trade, collection, purchase or sale of that species or any part, product or derivative thereof for such period as may be so specified.]

(9) In this section—

“plant” includes a tree or shrub;

“specimen to which this section applies” means any specimen of a species of flora which is a species to which an order under this section for the time being applies.

Annotations

Amendments:

- F43** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 29(a), S.I. No. 371 of 2001.
- F44** Substituted (18.07.2005) by *European Communities (Natural Habitats) (Amendment) Regulations 2005* (S.I. No. 378 of 2005), reg. 2(2).
- F45** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s.29(b), S.I. No. 371 of 2001.
- F46** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 29(c), S.I. No. 371 of 2001.
- F47** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s.29(d).
- F48** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 29(e), S.I. No. 371 of 2001.

Editorial Notes:

- E139** Power pursuant to section exercised (21.05.2015) by *Flora (Protection) Order 2015* (S.I. No. 356 of 2015).
- E140** The Minister may grant a license to permit derogation from compliance with the requirements of this section as provided (4.10.2010) by *European Communities (Birds and Natural Habitats) (Restrictions on Use of Poisoned Bait) Regulations 2010* (S.I. No. 481 of 2010, reg. 5.
- E141** Previous affecting provision: subs. (3)(b) substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 29(a), S.I. No. 371 of 2001; substituted as per F-note above.

- E142** Previous affecting provision: power pursuant to section exercised (14.04.1999) by *Flora (Protection) Order 1999* (S.I. No. 94 of 1999); revoked (21.05.2015) by *Flora (Protection) Order 2015* (S.I. No. 356 of 2015), art. 3, subject to transitional provisions in art. 4.
- E143** Previous affecting provision: application of section modified (26.04.1997) by *European Communities (Natural Habitats) Regulations 1997* (S.I. No. 94 of 1997), reg. 21; revoked (21.09.2011) by *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011), reg. 73(1), in effect as per art. 1(3).
- E144** Previous affecting provision: Minister empowered to grant a license to permit a derogation from compliance with this section (26.02.1997) by *European Communities (Natural Habitats) Regulations 1997* (S.I. No. 94 of 1997), reg. 25(1); revoked (21.09.2011) by *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011), reg. 73(1), in effect as per art. 1(3).
- E145** Previous affecting provision: power pursuant to section exercised (20.10.1987) by *Flora (Protection) Order 1987* (S.I. No. 274 of 1987); revoked (14.04.1999) by *Flora Protection Order 1999* (S.I. No. 94 of 1999), art. 3.
- E146** Power pursuant to section exercised (5.11.1980) by *Flora (Protection) Order 1980* (S.I. No. 338 of 1980); revoked (20.10.1987) by *Flora Protection Order 1987* (S.I. No. 274 of 1987), art. 3.

Enforcement of protection of wild birds. **22.**—(1) Subject to *subsection (2)* hereof, this section applies to every wild bird other than a wild bird of a species specified in the *Third Schedule* to this Act.

(2) The Minister may by regulations provide that—

- (a) a wild bird of a species specified in the *Third Schedule* to this Act shall be a wild bird to which this section applies,
- (b) this section shall not apply to a wild bird which is of a species specified in the regulations,
- (c) in such places or areas as are specified in the regulations and as regards such period or periods as are so specified, *subsection (4)* of this section shall not have effect, either, as may be so specified, generally or as regards such species of wild bird as are so specified,
- (d) this section shall not have effect in relation to the taking or removing by persons of a specified class of the eggs and nests of wild birds of a species so specified,

and in case any regulations under this subsection are for the time being in force, this section shall be construed and have effect subject to and in accordance with them; provided that regulations made by the Minister under this subsection and which deal with any matter mentioned in *paragraph (a), (b) or (c)* of this subsection shall be so made only after consultation with the Minister for Agriculture and Fisheries.

(3) A wild bird to which this section for the time being applies is in this Act referred to as a protected wild bird.

(4) Subject to the exceptions specified in *subsection (5)* of this section, any person who—

- (a) (i) hunts a protected wild bird, other than a protected wild bird which is of a species specified in an order under *section 24* of this Act, otherwise than under and in accordance with a permission or licence granted by the Minister under this Act, or
- (ii) hunts a protected wild bird which is of a species specified in an order under *section 24* of this Act, otherwise than—
 - (A) under and in accordance with such a permission or a licence granted by the Minister under this Act other than *section 29*,

(B) under and in accordance with a licence granted under *section 29* of this Act and (also) on a day, or during a period of days, specified in a relevant order under the said *section 24*,

(b) injures a protected wild bird otherwise than while hunting it,

(i) in case the protected wild bird is of a species other than a species specified in an order under *section 24* of this Act, under and in accordance with a licence or permission granted by the Minister under this Act,

(ii) in case the protected wild bird is of a species so specified, either in the manner mentioned in *clause (A)* of *paragraph (a) (ii)* of this subsection, or in the manner and on a day, or during a period of days, mentioned in *clause (B)* of the said *paragraph (a) (ii)*,

(c) wilfully takes or removes the eggs or nest of a protected wild bird otherwise than under and in accordance with such a licence,

(d) wilfully destroys, injures or mutilates the eggs or nest of a protected wild bird,

(e) wilfully disturbs a protected wild bird on or near a nest containing eggs or unflown young,

shall be guilty of an offence.

(5) It shall not be an offence for a person—

(a) while engaged in ornithology wilfully to disturb a protected wild bird, or

(b) while so engaged or engaged in agriculture, F49[aquaculture, fishing, forestry or turbarry] unintentionally to injure or kill a protected wild bird, or

F50[(c) to remove for conservation purposes or to destroy unintentionally the eggs or nest of a protected wild bird in the ordinary course of agriculture or forestry,]

(d) to capture an injured or disabled protected wild bird F51[, or the orphaned and dependant young of such a bird,] for the purpose of killing it humanely F52[...], or

(e) to kill humanely a protected wild bird which has been injured in the manner described in *paragraph (b)*, or captured in the manner described in *paragraph (d)* or injured in the circumstances described in *paragraph (h)* of this subsection F53[and where the bird is so injured or disabled that there is no reasonable chance of its recovering], or

(f) F54[...]

(g) to destroy or remove any such nest which is built in or on an occupied building F55[unless the nest contains the eggs or young of a protected wild bird], or

F56[(h) while constructing a road or while carrying on any archaeological operation, building operation or work of engineering construction or while constructing or carrying on such other operation or work as may be prescribed, unintentionally to kill or to injure a protected wild bird or to remove for conservation purposes or unintentionally to destroy, injure or mutilate the eggs or nest of a protected wild bird,]

and nothing in this section shall make unlawful anything which is duly done pursuant to F57[a licence or other permission granted or issued pursuant to the *Wildlife Acts, 1976 and 2000*, or which is duly done pursuant to any other statute] or statutory instrument, which is permitted to be done under such a statute or instrument or which is done pursuant to and in accordance with a licence or other permission granted or issued pursuant to such a statute or instrument or anything caused by or

which results from, or is consequent upon or the effect of any other act or thing which is lawfully done.

(6) In any proceedings for an offence under this section relating to a protected wild bird which is of a species other than a species specified in *Part I* of the *Fourth Schedule* to this Act, it shall be a defence for the defendant to prove that any capturing or killing complained of was urgently necessary for the purpose of stopping damage described in *section 42 (1)* of this Act being caused and that in the particular circumstances of the case it was not practical for him to apply to the Minister beforehand for a permission under *section 42* of this Act and that the defendant reasonably believed that damage mentioned in the said *section 42 (1)* was being caused by the protected wild bird to which the alleged offence relates or by protected wild birds of the same species as that of such protected wild bird.

(7) In any proceedings for an offence under this section in which it is alleged that the defendant wilfully disturbed a protected wild bird described in *subsection (4) (e)* of this section, it shall not be necessary for the prosecution to prove that at the time of the alleged offence the defendant was not engaged in ornithology.

(8) Proceedings for an offence under this section may be taken in any District Court District, and in case such proceedings are taken and apart from this section the Justice before whom the proceedings are brought would not have jurisdiction to hear and determine the proceedings, then for the purpose of conferring such jurisdiction the offence may be treated as having been committed within the District Court District to which such Justice is assigned.

(9) The Minister may grant a licence to a person—

(a) at any time to capture or kill humanely or capture and humanely kill a protected wild bird of a species specified in the licence for such educational, scientific or other purposes as shall be so specified,

(b) to hunt, in accordance with the licence, on such day or during such period of days as is specified in the licence, protected wild birds which are both pen-reared and of a species so specified,

(c) to so hunt, on such day or during such period of days, protected wild birds of a species so specified for the purpose of either training gun dogs for any field sport or holding gun dog trials,

(d) to F58[examine, inspect or] take the nests or eggs of protected wild birds of a species so specified for such educational, scientific or other purposes as shall be so specified.

F59[(e) to take the eggs of a protected wild bird of a species specified in the licence for the purposes of having them hatched out for repopulation, or re-introduction to the wild or, for such purposes, to move such eggs from the nest of a bird so specified to that of another bird of the same species or for such other purposes as the Minister considers appropriate in the circumstances in respect of the species so specified,

(f) to take or make photographic, video or other pictures of a protected wild bird of a species specified in the licence on or near a nest containing eggs or unflown young,

(g) to have in possession, for a reasonable period of time—

(i) an injured or disabled wild bird, or

(ii) one or more than one dependant young of a wild bird which is orphaned,

with the intention of tending and later releasing such bird or young back into the wild when and only when such bird or young, as the case may be, is no longer injured, disabled or dependant,

(h) to retain possession of a wild bird, that for reasons of disability or for other reasons deemed reasonable by the Minister, would, if released, be unlikely to survive unaided in the wild.]

(10) The Minister may by regulations provide that—

(a) subsection (6) of this section shall have effect in relation to any proceedings for offences under this section relating to protected wild birds of a species specified in both Part I of the Fourth Schedule to this Act and in the regulations,

(b) the said subsection (6) shall not have effect in relation to any such proceedings relating to protected wild birds of a species specified in the regulations,

and the said subsection (6) shall have effect accordingly.

Annotations

Amendments:

- F49** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 30(a)(i), S.I. No. 371 of 2001.
- F50** Substituted (6.12.1985) by *European Communities (Wildlife Act, 1976) (Amendment) Regulations 1985* (S.I. No. 397 of 1985), reg. 3(b), in effect as per reg. 1(2).
- F51** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 30(a)(ii), S.I. No. 371 of 2001.
- F52** Deleted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 30(a)(ii), S.I. No. 371 of 2001.
- F53** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 30(a)(iii), S.I. No. 371 of 2001.
- F54** Deleted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 30(a)(iv), S.I. No. 371 of 2001.
- F55** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 30(a)(v), S.I. No. 371 of 2001.
- F56** Substituted (6.12.1985) by *European Communities (Wildlife Act, 1976) (Amendment) Regulations 1985* (S.I. No. 397 of 1985), reg. 3(d), in effect as per reg. 1(2).
- F57** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 30(a)(vi), S.I. No. 371 of 2001.
- F58** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 30(b)(i), S.I. No. 371 of 2001.
- F59** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 30(b)(ii), S.I. No. 371 of 2001.

Modifications (not altering text):

- C13** Application of subs. (5) potentially restricted (4.10.2010) by *European Communities (Birds and Natural Habitats) (Restrictions on Use of Poisoned Bait) Regulations 2010* (S.I. No. 481 of 2010), reg. 4(4).

Prohibition of use of certain poisoned bait

4. ...

(4) For the avoidance of doubt, in the event of conflict between these Regulations and sections 22(5) and 23(7) of the Wildlife Act 1976 these Regulations prevail.

Editorial Notes:

- E147** The Minister may grant a license to permit derogation from compliance with the requirements of this section as provided (4.10.2010) by *European Communities (Birds and Natural Habitats) (Restrictions on Use of Poisoned Bait) Regulations 2010* (S.I. No. 481 of 2010, reg. 5).
- E148** Power pursuant to section exercised (1.10.1980) by *Wildlife Act, 1976 (Protection of Bullfinches) Regulations 1980* (S.I. No. 283 of 1980), in effect as per art. 2.
- E149** Previous affecting provision: subs. (5)(f) substituted (6.12.1985) by *European Communities (Wildlife Act, 1976) (Amendment) Regulations 1985* (S.I. No. 397 of 1985), reg. 3(c), in effect as per reg. 1(2); deleted as per F-note above.

Enforcement of protection of wild animals (other than wild birds).

23.—(1) Subject to *subsection (2)* hereof, this section applies to any animal which is of a species of fauna specified in the *Fifth Schedule* to this Act.

(2) Subject to *subsection (3)* of this section, the Minister may, after consultation with the Minister for Agriculture and Fisheries, by regulations provide that—

- (a) an animal of a species of fauna specified in the regulations (not being a species specified in the *Fifth Schedule* to this Act) shall be an animal to which this section applies,
- (b) an animal of a species of fauna specified both in the regulations and in the said *Fifth Schedule* shall not be an animal to which this section applies,
- (c) in such places or areas as are specified in the regulations and as regards such period or periods as are so specified, *subsection (5)* of this section shall not have effect either, as may be so specified, generally or as regards such species of animal as are so specified,

and in case any regulations under this subsection are for the time being in force, this section shall be construed and have effect subject to and in accordance with them.

(3) Regulations under this section—

- (a) which provide that an animal of any species of fish or aquatic invertebrate shall be an animal to which this section applies, or
- (b) the effect of which when made would be that this section would, for so long as the regulations are in force, cease to apply to animals which are of such a species,

shall be made or amended by the Minister only with the concurrence of the Minister for Agriculture and Fisheries who shall indicate his concurrence by signing the regulations.

(4) An animal to which this section for the time being applies is in this Act referred to as a protected wild animal.

(5) Any person who—

- (a) hunts a protected wild animal which is not an exempted wild mammal otherwise than under and in accordance with a permission or licence granted by the Minister under this Act,
- (b) hunts an exempted wild mammal otherwise than,
 - (i) under and in accordance with such a permission or a licence granted by the Minister under this Act other than *section 29*, or

- (ii) under and in accordance with a licence granted by the Minister under *section 29* of this Act and (also) on a day, or during a period of days, specified in a relevant order under *section 25* of this Act,
- (c) injures a protected wild animal otherwise than while hunting it,
 - (i) in case the protected wild animal is not an exempted wild mammal, under and in accordance with such a permission or a licence granted by the Minister under this Act,
 - (ii) in case the protected wild animal is an exempted wild mammal, either,
 - (A) under and in accordance with such a permission or a licence granted by the Minister under this Act other than *section 29*, or
 - (B) in the manner and on a day, or during a period of days, mentioned in *subparagraph (ii)* of *paragraph (b)* of this subsection,
- (d) wilfully interferes with or destroys the breeding place F60[or resting place] of any protected wild animal,

shall be guilty of an offence.

F61[(6) The Minister may grant a licence to a person—

- (a) to take, capture or humanely kill or capture and humanely kill at any time a protected wild animal of a species specified in the licence for such educational, scientific or any other purpose as shall be specified in the licence, or
- (b) to take or make photographic, video or other pictures of a protected wild animal of a species so specified on or near the breeding place of such an animal, or
- (c) to have in possession, for a reasonable period of time—
 - (i) an injured or disabled protected wild animal, or
 - (ii) one or more than one dependant young of a protected wild animal which is orphaned,

with the intention of tending and later releasing such animal or young back into the wild when and only when such animal or young, as the case may be, is no longer injured, disabled or dependant, or
- (d) to retain possession of a protected wild animal, that for reasons of disability or for other reasons deemed reasonable by the Minister, would, if released, be unlikely to survive unaided in the wild.]

(7) Notwithstanding *subsection (5)* of this section, it shall not be an offence for a person—

- (a) while engaged in agriculture, fishing or F62[aquaculture, forestry or turbarry,] unintentionally to injure or kill a protected wild animal, or
- (b) while so engaged to interfere with or destroy the breeding place of such an animal, or
- (c) while constructing a road or while carrying on any archaeological operation, building operation or work of engineering construction, or while constructing or carrying on such other operation or work as may be prescribed, F63[unintentionally to kill or injure such an animal or unintentionally to destroy or injure the breeding place or resting place] of such an animal, or
- (d) to capture an injured or disabled protected wild animal F64[, or the orphaned and dependant young of such an animal,] for the purpose of killing it

humanely or with the intention of tending it and of later releasing it F64[when, but only when, the said animal or its dependant young, as the case may be, are no longer disabled or dependant] or

- (e) to kill humanely a protected wild animal which is either injured in the manner described in *paragraph (a)* of this subsection or captured in the manner described in *paragraph (d)* of this subsection, or so to kill a protected wild animal injured in the circumstances described in *paragraph (c)* of this subsection, F65[and where the animal is so injured or disabled that there is no reasonable chance of its recovering,]

and nothing in this section shall make unlawful,

- (i) the taking and killing of hares by coursing at a regulated coursing match which is held both during a period specified as regards hares in a hares order and in a place to which such order applies,
- (ii) the hunting of hares by means of a pack of beagles or harriers both during a period specified as regards hares in a hares order and in a place to which the order applies,
- (iii) anything which section 3 (3) of the Whale Fisheries Act, 1937, permits to be done, or
- (iv) anything which is duly done pursuant to F66[a licence or other permission granted or issued pursuant to the *Wildlife Acts, 1976 and 2000*, or which is duly done pursuant to any other statute] or statutory instrument, which is permitted to be done under such a statute or instrument or which is done pursuant to and in accordance with a licence or other permission granted or issued pursuant to such a statute or instrument or anything caused by or which results from, or is consequent upon or the effect of any other act or thing which is lawfully done.

F67[(7A) the provisions of *subsection (7)* of this section shall not apply to the species listed in Annex IV (A) of Council Directive 92/43/EEC of 21 May 1992, and including any amendments that shall be made thereto.]

(8) In any proceedings for an offence under this section relating to a protected wild animal which is of a species other than a species specified in *Part II* of the *Fourth Schedule* to this Act, it shall be a defence for the defendant to prove that any capturing or killing complained of was urgently necessary for the purpose of stopping damage described in *section 42 (1)* of this Act being caused and that in the particular circumstances of the case it was not practical for him to apply to the Minister beforehand for a permission under *section 42* of this Act and that the defendant reasonably believed that damage mentioned in the said *section 42 (1)* was being caused by the protected wild animal to which the alleged offence relates or by protected wild animals of the same species as that of such protected wild animal.

(9) In any proceedings for an offence under this section it shall not be necessary for the prosecution to prove that any act constituting (whether in whole or in part) the alleged offence was done otherwise than while the defendant was engaged in agriculture, fishing or F68[, aquaculture, forestry or turbarry] F69[...].

(10) Proceedings for an offence under this section may be taken in any District Court District, and in case such proceedings are taken and apart from this section the Justice before whom the proceedings are brought would not have jurisdiction to hear and determine the proceedings, then for the purpose of conferring such jurisdiction the offence may be treated as having been committed within the District Court District to which such Justice is assigned.

(11) The Minister may by regulations provide that—

- (a) *subsection (8)* of this section shall have effect in relation to any proceedings for offences under this section relating to protected wild animals of a species

specified both in *Part II* of the *Fourth Schedule* to this Act and in the regulations,

(b) the said *subsection (8)* shall not have effect in relation to any such proceedings relating to protected wild animals of a species specified in the regulations,

and the said *subsection (8)* shall have effect accordingly.

Annotations

Amendments:

F60 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 31(a), S.I. No. 371 of 2001.

F61 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 31(b), S.I. No. 371 of 2001.

F62 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 31(c)(i), S.I. No. 371 of 2001.

F63 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 31(c)(ii), S.I. No. 371 of 2001.

F64 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 31(c)(iii), S.I. No. 371 of 2001.

F65 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 31(c)(iv), S.I. No. 371 of 2001.

F66 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 31(c)(v), S.I. No. 371 of 2001.

F67 Inserted (18.07.2005) by *European Communities (Natural Habitats) (Amendment) Regulations 2005* (S.I. No. 378 of 2005), reg. 2(3).

F68 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 31(d), S.I. No. 371 of 2001.

F69 Deleted (31.07.2001) by *Wildlife (Amendment) Act 2000, (38/2000)*, s. 31(d).

Modifications (not altering text):

C14 Application of subs. (7) potentially restricted (4.10.2010) by *European Communities (Birds and Natural Habitats) (Restrictions on Use of Poisoned Bait) Regulations 2010* (S.I. No. 481 of 2010), reg. 4(4).

Prohibition of use of certain poisoned bait

4. ...

(4) For the avoidance of doubt, in the event of conflict between these Regulations and *sections 22(5) and 23(7)* of the *Wildlife Act 1976* these Regulations prevail.

Editorial Notes:

E150 Power pursuant to section exercised (1.06.1990) by *Wildlife Act, 1976 (Protection of Wild Animals) Regulations 1990* (S.I. No. 112 of 1990), in effect as per art. 2.

E151 Power pursuant to section exercised (1.10.1980) by *Wildlife Act 1976 (Protection of Wild Animals) Regulations 1980* (S.I. No. 282 of 1980), in effect as per art. 2.

F70 [Prohibition on deer hunting with dogs.

23A.— (1) In this section ‘deer’ includes a deer that is not a wild animal.

(2) Subject to *subsection (3)*, a person who hunts deer with two or more dogs shall be guilty of an offence.

(3) It shall not be an offence for a person on foot to hunt deer with 2 or more dogs, under and in accordance with—

(a) a licence granted under *section 29* of this Act, or

(b) a permission granted under *section 42* of this Act.]

Annotations

Amendments:

F70 Inserted (10.07.2010) by *Wildlife (Amendment) Act 2010 (19/2010)*, s. 3, commenced on enactment.

Editorial Notes:

E152 The section heading is taken from the amending section in the absence of one included in the amendment.

Open seasons for certain protected wild birds.

24.—(1) Subject to *sections 27* and *28* of this Act, the Minister may by order provide that any protected wild bird which is of a species specified in the order, may be hunted either throughout the State or in any part thereof specified in the order on a day or during a period of days so specified.

(2) An order under this section may contain different provisions in relation to different areas and different species of protected wild birds, including provisions limiting the total number of any particular such species which may, during a period of days specified in the order, be killed F71[...] in hunting in accordance with the order either in relation to the area as a whole to which the order applies or to part of such area.

Annotations

Amendments:

F71 Deleted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 33, S.I. No. 371 of 2001.

Editorial Notes:

E153 Power pursuant to section exercised (9.09.1998) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1998* (S.I. No. 332 of 1998).

E154 Power pursuant to section exercised (16.07.1996) by *Wildlife (Wild Mammals) (Open Seasons) (Amendment) Order 1996* (S.I. No. 220 of 1996).

E155 Power pursuant to section exercised (31.08.1989) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1989* (S.I. No. 221 of 1989).

E156 Power pursuant to section exercised (8.11.1984) by *Wildlife (Wild Birds) (Open Season) (Amendment) Order 1984* (S.I. No. 283 of 1984).

E157 Power pursuant to section exercised (12.08.1982) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1982* (S.I. No. 266 of 1982).

E158 Power pursuant to section exercised (18.07.1980) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1980* (S.I. No. 229 of 1980).

E159 Power pursuant to section exercised (30.05.1979) by *Wildlife (Wild Birds) (Open Seasons) Order 1979* (S.I. No. 192 of 1979).

- E160** Previous affecting provision: power pursuant to section exercised (for periods in 1978 and 1979) by *Wild Birds (Open Seasons) Order 1978* (S.I. No. 201 of 1978).; spent.
- E161** Previous affecting provision: power pursuant to section exercised (31.07.1997) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1997* (S.I. No. 363 of 1997); superseded (9.09.1998) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1998* (S.I. No. 332 of 1998), art. 4.
- E162** Previous affecting provision; power pursuant to section exercised (16.07.1996) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1996* (S.I. No. 219 of 1996); superseded (31.07.1997) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1997* (S.I. No. 363 of 1997), art. 3.
- E163** Previous affecting provision: power pursuant to section exercised (22.11.1995) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) (No. 2) Order 1995* (S.I. No. 304 of 1995); superseded (31.07.1997) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1997* (S.I. No. 363 of 1997), art. 3.
- E164** Previous affecting provision: power pursuant to section exercised (15.09.1995) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1995* (S.I. No. 249 of 1995); superseded (31.07.1997) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1997* (S.I. No. 363 of 1997), art. 3.
- E165** Previous affecting provision: power pursuant to section exercised (for period 1.11.1993 to 30.11.1993) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1993* (S.I. No. 255 of 1993); spent.
- E166** Previous affecting provision: power pursuant to section exercised (for period 1.11.1992 to 30.11.1992) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1992* (S.I. No. 233 of 1992); spent.
- E167** Previous affecting provision: power pursuant to section exercised (for period 1.11.1991 to 30.11.1991) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1991* (S.I. No. 268 of 1991); spent.
- E168** Previous affecting provision: power pursuant to section exercised (10.09.1986) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1986* (S.I. No. 307 of 1986); superseded (31.07.1997) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1997* (S.I. No. 363 of 1997), art. 3.
- E169** Previous affecting provision: power pursuant to section exercised (for period 16.11.1985 to 4.01.1986) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) (No. 2) Order 1985* (S.I. No. 347 of 1985); spent.
- E170** Previous affecting provision: power pursuant to section exercised (29.10.1985) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1985* (S.I. No. 346 of 1985); superseded (10.09.1986) by *Wildlife (Wild Birds) (Open Seasons) (Amendment) Order 1986* (S.I. No. 307 of 1986), art. 3.
- E171** Previous affecting provision: power pursuant to section exercised (for periods in 1977 and 1978) by *Wild Birds (Open Seasons) Order 1977* (S.I. No. 243 of 1977); spent.

Open seasons for certain wild mammals.

25.—(1) Subject to *sections 27 and 28* of this Act, the Minister may by order provide that any wild mammal (being a protected wild animal) which is of a species specified in the order (in this Act referred to as an exempted wild mammal) may be hunted in a manner so specified either throughout the State or in any part thereof specified in the order, on a day or during a period of days so specified.

(2) An order under this section may contain different provisions in relation to different areas and different species of exempted wild mammals, including provisions limiting the total number of any particular species of such mammal which may, during a period of days specified in the order, be killed F72[...] in hunting in accordance with the order either in relation to the area as a whole to which the order applies or to part of such area.

Annotations**Amendments:**

F72 Deleted (31.07.2001) by *Wildlife (Amendment) Act 2000*(38/2000), s. 34, S.I. No. 371 of 2001.

Editorial Notes:

E172 Power pursuant to section exercised (27.08.2008) by *Wildlife (Wild Mammals) (Open Seasons) (Amendment) (No. 2) Order 2008* (S.I. No. 346 of 2008).

E173 Power pursuant to section exercised (14.02.2008) by *Wildlife (Wild Mammals) (Open Seasons) (Amendment) Order 2008* (S.I. No. 27 of 2008).

E174 Previous affecting provision: power pursuant to section exercised (9.09.1998) by *Wildlife (Wild Mammals) (Open Seasons) Order 1998* (S.I. No. 331 of 1998); revoked (1.09.2005) by *Wildlife (Wild Mammals) (Open Seasons) Order 2005* (S.I. No. 550 of 2005), art. 5.

E175 Previous affecting provision: power pursuant to section exercised (10.09.1986) by *Wildlife (Wild Mammals) (Open Seasons) (Amendment) Order 1986* (S.I. No. 306 of 1986); spent on revocation of *Wildlife (Wild Mammals) (Open Seasons) Order 1998* (S.I. No. 331 of 1998) (1.09.2005) by *Wildlife (Wild Mammals) (Open Seasons) Order 2005* (S.I. No. 550 of 2005), art. 5.

E176 Previous affecting provision: power pursuant to section exercised (30.05.1979) by *Wildlife (Wild Mammals) (Open Seasons) Order 1979* (S.I. No. 193 of 1979); revoked (9.09.1998) by *Wildlife (Wild Mammals) (Open Seasons) Order 1998* (S.I. No. 331 of 1998), reg. 4.

E177 Previous affecting provision: power pursuant to section exercised (for periods in 1978 and 1979) by *Wildlife (Wild Mammals) (Open Seasons) Order 1978* (S.I. No. 202 of 1978); spent.

E178 Previous affecting provision: power pursuant to section exercised (for periods in 1977 and 1978) by *Wildlife (Wild Mammals) (Open Seasons) Order 1977* (S.I. No. 240 of 1977); spent.

Licences to hunt
otters or deer
and to hunt or
course hares.

26.— (1) F73[...]

(2) The Minister may grant to the master or other person having charge for the time being of a pack of beagles or harriers a licence to hunt hares in any district or districts specified in the licence with that pack on such day or days (being a day or days which are not specified in a hares order) as are both specified in the licence and are in the year in which the licence is granted.

(3) The Minister may, on an application made by any coursing club which is affiliated to the Irish Coursing Club, grant to the applicant a licence to hold, on such day or days (being a day or days which are not specified in a hares order) as are both specified in the licence and are in the year in which the licence is granted, regulated coursing matches.

Annotations**Amendments:**

F73 Deleted (10.07.2010) by *Wildlife (Amendment) Act 2010*, (19/2010), s. 2.

Editorial Notes:

E179 Previous affecting provision: subs. (1)(i) deleted (31.07.2001) by *Wildlife (Amendment) Act 2000*(38/2000), s. 35, S.I. No. 371 of 2001; subsection deleted as per F-note above.

Temporary suspension of open seasons.

27.—(1) Where the Minister is satisfied that because of the severity of weather conditions occurring in the State or elsewhere, or for any other reason (which reason shall be specified in the order), it is desirable, in the interest of conserving fauna, to make an order under this section, he may by order prohibit during such period not exceeding one month as may be specified in the order, either throughout the State or in such area or areas thereof as may be so specified, the hunting of—

(a) any protected wild bird which is of a species specified both in an order under *section 24* of this Act and in the order under this subsection, or

(b) any exempted wild mammal which is of a species specified in the order under this subsection.

(2) In case before the commencement of an order under this section an order under *section 24* or *section 25* of this Act has been made and has not been revoked, the following provisions shall apply—

(a) in case immediately before such commencement the order under the said *section 24* or *25*, as the case may be, was in force, it shall not have effect in relation to any protected wild bird or exempted wild mammal specified in the order under this section at any time during the period so specified, and

(b) in case immediately before such commencement the order under the said *section 24* or *25*, as the case may be, had not come into force, then, notwithstanding anything contained in the order, unless the order under this section is sooner revoked, as regards any such protected wild bird or exempted wild mammal, the order under the said *section 24* or *25*, as the case may be, shall not come into force until the expiration of the period specified in the order under this section.

(3) The Minister may by order extend the period specified in an order under *subsection (1)* of this section; provided that the period during which a prohibition under this section is to remain in force shall in no case exceed two months.

Annotations

Editorial Notes:

E180 Previous affecting provision: power pursuant to section exercised (for period 8.12.2010 to 30.12.2010) by *Wildlife Act 1976 (Temporary Suspension of Open Season) (No. 2) (Amendment) Order 2010* (S.I. No. 613 of 2010); spent.

E181 Previous affecting provision: power pursuant to section exercised (for period 8.12.2010 to 21.12.2010) by *Wildlife Act 1976 (Temporary Suspension of Open Season) (No. 2) (Amendment) Order 2010* (S.I. No. 598 of 2010); expired and superseded (21.12.2010) by *Wildlife Act 1976 (Temporary Suspension of Open Season) (No. 2) (Amendment) Order 2010* (S.I. No. 613 of 2010), art. 2.

E182 Previous affecting provision: power pursuant to section exercised (for period 8.12.2010 to 14.12.2010) by *Wildlife Act 1976 (Temporary Suspension of Open Season) (No. 2) Order 2010* (S.I. No. 582 of 2010); expired and superseded (14.12.2010) by *Wildlife Act 1976 (Temporary Suspension of Open Season) (No. 2) (Amendment) Order 2010* (S.I. No. 598 of 2010), art. 3.

E183 Previous affecting provision: power pursuant to section exercised (for period 15.01.2010 to 20.01.2010) by *Wildlife Act 1976 (Temporary Suspension of Open Season) (Amendment) Order 2010* (S.I. No. 6 of 2010); spent.

E184 Previous affecting provision: power pursuant to section exercised (for period 6.01.2010 to 15.01.2010) by *Wildlife Act 1976 (Temporary Suspension of Open Season) Order 2010* (S.I. No. 2 of 2010); amended (15.01.2010) by *Wildlife Act 1976 (Temporary Suspension of Open Season) (Amendment) Order 2010* (S.I. No. 6 of 2010), art. 2; expired.

E185 Previous affecting provision: power pursuant to section exercised (for period 18.01.1985 to 31.01.1985) by *Wildlife Act, 1976 (Section 27) Order 1985* (S.I. No. 11 of 1985); spent.

E186 Previous affecting provision: power pursuant to section exercised (for period 23.01.1982 to 31.01.1982) by *Wildlife Act, 1976 (Section 27) (No. 2) Order 1982* (S.I. No. 15 of 1982); spent.

E187 Previous affecting provision: power pursuant to section exercised (for period 13.01.1982 to 22.01.1982) by *Wildlife Act, 1976 (Section 27) Order 1982*. (S.I. No. 3 of 1982); spent.

CHAPTER IV

Restrictions to protect wildlife

General restriction as regards hunting or killing with firearms certain exempted wild mammals and certain protected wild birds.

28.—(1) A person shall not with firearms hunt or kill on any land an exempted wild mammal or a protected wild bird of a species specified in an order under *section 24* of this Act which is for the time being in force unless—

- (a) the exempted wild mammal or the protected wild bird is hunted or killed pursuant to and in accordance with a licence granted under this Act, or deemed to have been granted under *section 29* of this Act, and
- (b) the person is in relation to the land a qualified person for the purposes of this section.

(2) A person shall in relation to land be qualified for the purposes of this section if he is at least sixteen years of age and—

- (a) is entitled to sporting rights over the land, or
- (b) is the guest, invitee, servant or agent, or possesses the written authority of a person who is entitled to sporting rights over the land, or
- (c) is a member of a body of persons which is entitled to sporting rights over the land or which has such authority, or
- (d) is a person who is of a class or description which the Minister by regulations declares to be a qualified class or description for the purposes of this section.

F74[(2A) (a) An applicant for—

- (i) the grant of a licence under *section 29* of this Act, or
- (ii) the grant or renewal of a certificate to which *section 29(5)* of this Act relates,

may, before the granting of any such licence or the granting or renewal of any such certificate, be required to supply satisfactory evidence that the applicant is a competent person to hold such a licence.

- (b) The evidence required under *paragraph (a)* of this subsection shall include the ability to identify certain species of fauna and to have a satisfactory knowledge of the relevant provisions of the *Wildlife Acts, 1976 and 2000*, and of any instruments made under those Acts.
- (c) The Minister may make regulations for the purpose of giving effect to this subsection.]

(3) A person who contravenes *subsection (1)* of this section shall be guilty of an offence.

Annotations**Amendments:**

F74 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000*, (38/2000), s. 37, S.I. No. 371 of 2001.

F75 Licences to hunt with firearms.

29.—(1) Subject to *section 75(1)* of this Act, the Minister may, on application to the Minister in that behalf, if he or she thinks fit, and on payment of the prescribed fee (if any), grant to a person, who when making the application makes a declaration in a form approved of for the purposes of this section by the Minister, a licence (operating in the manner specified in *subsection (4)* of this section) to hunt and kill with firearms, subject to the restrictions contained in *section 33* of this Act, and such conditions (if any) as the Minister may attach to the licence, exempted wild mammals (other than hares).

(2) In determining an application for a licence under *subsection (1)* or *subsection (5)(b)* of this section or a renewal under *subsection (6)* of this section, the Minister shall have regard to the conservation requirements of the species of protected wild birds or exempted wild mammals concerned.

(3) (a) Notwithstanding *subsection (2)* of this section, and subject to this subsection, the Minister, before granting a licence under *subsection (1)* or *subsection (5)(b)* or renewing a licence under *subsection (6)*, shall be of the opinion that the application is *bona fide* and that there is no good reason to refuse to grant the licence or renew it.

(b) The Minister may, for the purpose of establishing that there is no good reason to refuse to grant or renew a licence under this section to a person ordinarily resident outside the State, treat any of the following as *prima facie* evidence of suitability to so grant or renew:

(i) in the case of a person resident in a Member State of the European Community other than the State, any European Firearms Pass duly issued to such person to which paragraphs (4) and (5) of Regulation 7 of the European Communities (Acquisition and Possession of Weapons and Ammunition) Regulations, 1993 (S.I. No. 362 of 1993), relate, or

(ii) in any other case, any other permit, licence, authorisation or other document duly issued by an appropriate authority or body outside the State which the Minister considers acceptable.

(c) The Minister may make such enquiries as he or she considers appropriate as to the suitability of any applicant for a licence under this section.

(4) A licence granted or renewed by the Minister under this section shall remain in force for a period beginning on the day on which the licence is granted or renewed and ending on the next following 31st day of July and subject to its terms the licence shall operate to authorise the holder of the licence, for so long as the licence is in force, to hunt and kill with firearms any fauna to which the licence relates pursuant to and in accordance with such orders (if any) made under *section 24* or *25* of this Act as are for the time being in force.

(5) (a) **F76** [Subject to *subsection (5A)*, where] a person applies to a Superintendent of the Garda Síochána for the grant of a firearm certificate under *section 3 of the Firearms Act, 1925*, or for the grant of a firearm certificate under *section 2 of the Firearms (Firearm Certificates for Non-Residents) Act, 2000*, or for the renewal under *section 9 of the Firearms Act, 1964*, of a firearm certificate granted under the said *section 3* and makes a declaration referred to in *subsection (1)* of this section, the certificate shall, if it is endorsed in the manner described in *subsection (8)* of this section, for the purposes of *sections 22(4)* and *23(5)* of this Act be deemed to be a licence granted by the

Minister under this section and, subject to *section 75(1)* and to the restrictions contained in *section 33* of this Act, such certificate shall, for so long as it is in force, operate to authorise the person to whom it is granted, with the firearm to which the certificate relates—

(i) to hunt and kill pursuant to any order under *section 24* of this Act which for the time being is in force any protected wild bird,

(ii) to hunt and kill pursuant to and in accordance with any order under *section 25* of this Act which is so in force, any hare.

(b) Notwithstanding the provisions of *paragraph (a)* of this subsection, the Minister may, on application to him or her in that behalf, subject to *section 75(1)* of this Act, during the period referred to in subsection (2)(a)(i) of section 2 of the Firearms (Firearm Certificates for Non-Residents) Act, 2000, or that period as varied under that section, if the Minister thinks fit, grant to a person ordinarily resident outside the State, who when making the application makes a declaration referred to in *subsection (1)* of this section, a licence (operating in the manner specified in *subsection (4)* of this section) to hunt and kill with firearms, subject to the restrictions contained in *section 33* of this Act, and such conditions (if any) as the Minister may attach to the licence, protected wild birds or hares to which an order under *section 24* or *section 25* of this Act for the time being applies.

(c) Paragraph (b) of this subsection shall expire at the end of the period referred to in subsection (2)(a)(i) of section 2 of the Firearms (Firearm Certificates for Non-Residents) Act, 2000, or that period as varied under that section.

F77[(5A) (a) A firearm certificate to which this subsection applies shall for the purposes of *sections 22(4)* and *23(5)* of this Act be deemed to be a licence granted by the Minister under this section and, subject to *section 75(1)* and to the restrictions contained in *section 33* of this Act, such certificate shall, for so long as it is in force, operate to authorise the person to whom it is granted, with the firearm to which the certificate relates, to engage in the activities referred to in *subparagraphs (i)* and *(ii)* of *subsection (5)(a)*.

(b) This subsection applies to a firearm certificate that is granted—

(i) in respect of a shot-gun, and

(ii) on or after 1 August 2009 F78[...].]

(6) A licence granted by the Minister under this section (other than a licence deemed pursuant to *subsection (5)(a)* of this section to have been so granted) may, if the Minister thinks fit, be renewed by the Minister on the application of the holder of the licence who when making the application makes a declaration referred to in *subsection (1)* of this section.

(7) A person aggrieved by a refusal by the Minister to grant a licence under *subsection (1)* or *subsection (5)(b)* of this section or to renew a licence under *subsection (6)* of this section may appeal to a Judge of the District Court against the refusal, and in determining the appeal the Judge may—

(a) confirm the refusal, or

(b) allow the appeal, inform the Minister of his or her decision and direct the Minister as soon as may be to grant to the applicant or renew, as may be appropriate, a licence under this section.

(8) Where a firearm certificate is granted to a person described in *subsection (5)(a)* of this section, there shall be endorsed on the certificate the following:

‘This certificate, for so long as it is in force, authorises the person to whom it is granted, with the firearm to which it relates—

(a) to hunt and kill pursuant to any order under *section 24 of the Wildlife Act, 1976*, which is for the time being in force any protected wild bird within the meaning of that Act,

(b) to hunt and kill pursuant to and in accordance with any order under *section 25 of the said Act* which is so in force, any hare.'.

(9) Where any convention, protocol or other agreement between the State and any other country or territory provides for the reciprocal recognition of licences granted or deemed to have been granted under this section and other licences, permits, permissions or authorisations granted or issued in that country or territory, the Minister may by regulations declare and provide that any such other licence, permit, permission or authorisation which is for the time being in force shall be deemed to be, and shall have the same legal effect as a licence under this section.

(10) (a) The holder of a licence granted or renewed under this section or a firearm certificate endorsed in the manner described in *subsection (8)* of this section shall, if the Minister so requires either by a notice in writing sent to the holder or by a notice published for the purposes of this subsection in at least one daily newspaper published in the State, give to the Minister the following information, namely, a statement of the number and species of protected wild birds and the number and species of protected wild animals shot and taken by the holder during such period as the Minister specifies in the notice and either, as may be so specified, in any place in the State or in any place in a part of the State which is so specified.

(b) The Minister may by regulations require the holder of a licence granted or renewed under this section or of a firearm certificate endorsed in the manner described in *subsection (8)* of this section to tag or otherwise mark, in a manner and at a time specified, any animal or bird captured or killed under such a licence or certificate.

(11) A person who fails to comply with a requirement of the Minister under *subsection (10)* of this section shall be guilty of an offence.

(12) Nothing in this section shall be construed as affecting anything contained in the Firearms Acts, 1925 to 2000.]

Annotations

Amendments:

- F75** Substituted (14.07.2000) *Firearms (Firearms Certificates for Non-Residents) Act 2000* (20/2000), s. 4, commenced as per s. 8(3)..
- F76** Substituted (10.07.2010) by *Wildlife (Amendment) Act 2010* (19/2010), s. 4(a), commenced on enactment.
- F77** Inserted (10.07.2010) by *Wildlife (Amendment) Act 2010* (19/2010), s. 4(b), commenced on enactment.
- F78** Deleted (24.07.2012) by *Wildlife (Amendment) Act 2012* (29/2012), s. 1, commenced on enactment.

Editorial Notes:

- E188** Previous affecting provision: application of section restricted (13.07.1998) by *Firearms (Temporary Provisions) Act 1998* (32/1998), s. 2, commenced on enactment subject to transitional provision in s. 3; expired (14.07.2000) as per s. 4(4), (5) and *Firearms (Temporary Provisions) Act, 1998, Continuance Order 1999* (S.I. No. 189 of 1999), art. 2.

Hunting restricted on or over foreshore belonging to State and certain land so belonging.

F79[30.—(1) (a) A person shall not, without permission given in writing by the Minister, hunt protected wild animals and wild birds on or over foreshore belonging to the State or on or over land belonging to the State and which is either covered by any inland waters or comprised in the lakeshore accretion from any lake, or accretion from the sea where such land is owned by the State.

(b) The Minister may by regulations—

(i) in relation to wild birds—

(I) apply this section, either generally or by reference to one or more species, to wild birds, or

(II) apply this section generally to species of wild birds subject to the exclusion of one or more such species,

and

(ii) in relation to wild animals—

(I) apply this section, either generally or by reference to one or more species, to wild animals which are not protected wild animals, or

(II) apply this section generally to species of wild animals which are not protected wild animals, subject to the exclusion of one or more such species.

(c) The Minister may attach conditions in writing to any permission given under this subsection and may at any time vary such conditions or withdraw any such permission.

(2) In determining an application for permission under this section, the Minister shall have regard to the conservation requirements of the species concerned.

(3) Any person who contravenes *subsection (1)* of this section or fails to comply with a condition under that subsection shall be guilty of an offence.]

Annotations

Amendments:

F79 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 38, S.I. No. 371 of 2001.

Sale, purchase and possession of certain perching birds prohibited.

31.—(1) It shall be an offence for any person to sell, purchase or have in his possession a live perching bird to which this section applies other than a close-ringed specimen bred in captivity **F80**]; but nothing in this subsection shall make unlawful the possession consequent upon the capture of any such bird pursuant to and in accordance with a licence or permission granted under this Act].

(2) This section applies to any live perching bird (order *Passeriformes*) of a species which occurs in a wild state in the State, Northern Ireland, Great Britain, the Channel Islands or the Isle of Man and which is not a species specified in the Third Schedule to this Act.

(3) In any proceedings for an offence under this section it shall be a defence for the defendant to prove that—

(a) he lawfully acquired the relevant perching bird before the commencement of this section, or

(b) he lawfully acquired such bird from a person who so acquired it before such commencement.

(4) In this section “close-ringed specimen” means a specimen of live perching bird (order *Passeriformes*) fitted with a continuous metal band or ring which has been slipped over its foot and on to its leg F81[not later than 10 days after it has been hatched.]

Annotations

Amendments:

- F80** Inserted (31.07.2000) by *Wildlife (Amendment) Act 2000* (38/2000), s. 39(a), S.I. No. 371 of 2001.
- F81** Substituted (31.07.2000) by *Wildlife (Amendment) Act 2000* (38/2000), s. 39(b), S.I. No. 371 of 2001.

Ringling and marking, and possession of cannon-nets, etc. restricted.

32.—F82[(1) It shall be an offence for a person, otherwise than pursuant to and in accordance with a licence granted by the Minister for the purposes of this subsection, to—

(a) mark by cutting, branding or tattooing, or

(b) attach any band, ring, microchip, tag or other marking device to,

any wild animal or wild bird or to take by net, trap or by any other means any such animal or bird for the purposes of so marking it or attaching to it any band, ring, microchip, tag or other marking device.

(1A) Subject to *subsection (4) of section 31* of this Act, the Minister may by regulations specify the method of marking, including the type and size of any band, ring, microchip, tag or other marking device or substance, for the purposes of either or both the said *section 31* and of this section and different methods may be specified for different species.

(2) *Subsection (1)* of this section shall not apply to—

(a) the close ringing of artificially reared wild birds,

(b) captive bred birds prescribed in an open seasons order,

(c) captive bred waterfowl collections, or

(d) the clipping of the feathers of an artificially reared protected wild bird for purposes of the confinement prior to the release into the wild of such protected wild bird.]

(3) It shall be an offence for a person to import F83[into the State from outside the European Union] or have in his possession a cannon-net, mist-net, rocket-net or similar appliance for taking or trapping unless he is the holder of a licence granted by the Minister for the purposes of *subsection (1)* of this section.

F84[(3A) The granting of a licence under *subsection (3)* of this section shall not be construed as restricting any application of, or removing any obligation to comply with, the Firearms Acts, 1925 to 2000.]

(4) A licence granted for the purposes of *subsection (1)* of this section may, as the Minister thinks fit, apply to wild animals and wild birds (other than artificially-reared wild birds) generally or to such species of such animals and birds as are specified in the licence.

(5) A licence granted for the purposes of *subsection (1)* of this section may be expressed, and if so expressed shall operate, to authorise the doing of, within an area or areas specified in the licence, and only within such area or areas, the things permitted to be done by the licence.

(6) A person shall not be convicted under this section and under *section 22, 23 or 34* of this Act in respect of the same act.

Annotations

Amendments:

- F82** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000(38/2000)*, s. 40(a), S.I. No. 371 of 2001.
- F83** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000(38/2000)*, s. 40(b), S.I. No. 371 of 2001.
- F84** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000(38/2000)*, s. 40(c), S.I. No. 371 of 2001.

Restriction on use of certain firearms etc.

33.—(1) It shall be an offence for a person to F85[hunt or injure in the course of hunting]—

(a) with a repeating or automatic shotgun (other than a repeating or automatic shotgun which is adapted or modified so as to render it incapable of carrying more than three shotgun cartridges), with an airgun, air-rifle, gas-rifle, pistol or revolver, or with any firearm fitted with a silencer device, any wild bird,

(b) with a rifle, any protected wild bird.

(2) It shall be an offence for a person to F86[hunt] or injure any wild bird or wild F86[animal] with a spring gun, or with tracer shot or with F86[any explosive other than ammunition for, and used with, a firearm].

(3) It shall be an offence for a person to F87[hunt or injure in the course of hunting] with a shotgun a protected wild animal other than a hare F88[otherwise than under and in accordance with a licence granted in that behalf by the Minister.]

(4) Subject to the foregoing subsections of this section, the Minister may make regulations specifying the type and calibre of firearms and ammunition which may be used to hunt wild birds and wild F89[animals] and providing that firearms and ammunition of any other type and calibre shall not be used to hunt such birds or F89[animals].

(5) In this section “rifle” includes both a gas-rifle and an air-rifle.

Annotations

Amendments:

- F85** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 41(a), S.I. No. 371 of 2001.
- F86** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)* s. 41(b), S.I. No. 371 of 2001.
- F87** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 41(c), S.I. No. 371 of 2001.
- F88** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 41(c), S.I. No. 371 of 2001.
- F89** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 41(d), S.I. No. 371 of 2001.

Editorial Notes:

E189 Power pursuant to subs. (4) exercised (21.07.1977) by *Wildlife Act, 1976 (Firearms and Ammunition) Regulations 1977* (S.I. No. 239 of 1977).

Certain use of traps, snares etc. prohibited.

34.—(1) Notwithstanding anything contained in this Act apart from this section but subject to *section 42*, a person shall not—

F90[(a) hunt any wild bird, wild mammal or protected wild animal by means of a trap, snare, net, line, hook, arrow, dart, spear or similar device however propelled, instrument or missile, or birdlime or any substance of a like nature, or any poisonous, poisoned or stupefying bait, any gas or smoke or chemical wetting agent or any electrical device which is calculated or likely to cause death, unconsciousness or bodily injury to such bird, mammal or animal, or

(b) affix, place or set—

(i) any trap, snare or net for killing or taking a wild bird, wild mammal or protected wild animal, or

(ii) any line, hook, electrical device or other device or instrument, calculated or likely to cause death or bodily injury to any wild bird, wild mammal or protected wild animal coming in contact with it,

on any tree, pole, cairn or other structure in, or in the vicinity of, any place frequented by wild birds, wild mammals or protected wild animals, or

(c) lay any poisonous or poisoned substance or stupefying bait, or any gas or smoke or chemical wetting agent, being a substance, bait or agent which is calculated or is likely to cause injury, or facilitate the capture of, a wild bird, wild mammal or protected wild animal, in or in the vicinity of, any place mentioned in *paragraph (b)* of this subsection, or on any tree, pole, cairn or other structure in or in the vicinity of such place.]

(2) *Subsection (1)* of this section shall not apply to or render unlawful—

(a) the affixing, placing or setting of a trap, snare or net which for the time being stands approved for the purposes of this section by virtue of regulations under this section,

(b) the taking or killing by means of any such trap, snare or net of any wild bird which is not a protected wild bird or any F91[wild animal] which is not a protected wild animal,

and nothing in the said *subsection (1)* shall make unlawful anything which is duly done pursuant to a statute (other than this Act) or statutory instrument, which is permitted to be done under such a statute or instrument or which is done pursuant to and in accordance with a licence or other permission granted or issued pursuant to such a statute or instrument or anything caused by or which results from, or is consequent upon or the effect of any other act or thing which is lawfully done.

(3) *Subsection (1)* of this section shall not apply to any of the following if done pursuant to and in accordance with a licence granted in that behalf by the Minister:

(a) the capture alive, on land specified in the licence by means of a trap, snare or net of any species of wild bird F92[or wild animal] specified in the licence, for the purpose of propagating or of improving the quality of such species,

(b) the capture alive by means of nets of hares by or on behalf, or at the request, of a coursing club affiliated to the Irish Coursing Club,

(c) the capture alive by means of nets or other devices of hawks or falcons for the purpose of lawful falconry within the State,

F93[(cc) the capture or killing of any wild bird or any wild animal in or on, or the removal of any such bird or animal from, any premises or other land by means of any poisoned, poisonous or stupefying substance specified in the licence, or any gas or smoke or chemical wetting agent or other devices so specified, for the purpose of stopping or preventing serious damage being caused to any thing to which *section 42(1)* of this Act relates,]

F94[(d) the capture alive of, or the taking of dead, wild birds or wild animals, for research or other scientific or educational purposes or for removal of live wild birds or wild animals to a new habitat, or to a place specified in the licence.]

(4) The Minister may by regulations declare a trap, snare or net which is of a particular type, class or description specified in the regulations—

(a) to be approved of for the purposes of this section and may, if he thinks fit, regulate its use as regards wild birds or wild F95[animals.]

(b) to be a trap, snare or net to which *subsection (6)* of this section applies.

F96[(4A) In relation to wild animals to which this section does not otherwise apply, the Minister may by regulations—

(a) apply this section to such wild animals, either generally or by reference to one or more species, or

(b) apply this section generally to species of such wild animals, subject to the exclusion of one or more such species.]

(5) Any person who contravenes *subsection (1)* of this section shall be guilty of an offence.

F97[(6) Any person who imports into the State from outside the European Union, or has in his possession other than pursuant to and in accordance with a licence granted by the Minister in that behalf, or who in the course of his trade or business sells or offers for sale a trap, snare or net which pursuant to *subsection (4)* of this section is for the time being declared by the Minister to be a trap, snare or net to which this subsection applies shall be guilty of an offence.]

(7) A person shall not be convicted under this section and under *section 22* or *section 23* of this Act or *section 8* of the Protection of Animals Act, 1911, in respect of the same act.

F98[(8) The other provisions of this section are without prejudice to *sections 7* and *14* of the Protection of Animals (Amendment) Act, 1965.]

Annotations

Amendments:

F90 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 42(a), S.I. No. 371 of 2001.

F91 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000*, (38/2000), s. 42(b), S.I. No. 371 of 2001.

F92 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 42(c)(i), S.I. No. 371 of 2001.

F93 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 42(c)(ii), S.I. No. 371 of 2001.

- F94** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 42(c)(iii), S.I. No. 371 of 2001.
- F95** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 42(d), S.I. No. 371 of 2001.
- F96** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 42(e), S.I. No. 371 of 2001.
- F97** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 42(f), S.I. No. 371 of 2001.
- F98** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 42(g), S.I. No. 371 of 2001.

Editorial Notes:

- E190** Power pursuant to subs. (4) exercised (19.11.2003) by *Wildlife Act 1976 (Approved Traps, Snares and Nets) Regulations 2003* (S.I. No. 620 of 2003).
- E191** Previous affecting provision: power pursuant to subs. (4) exercised (23.09.1977) by *Wildlife Act, 1976 (Approved Traps, Snares and Nets) Regulations 1977* (S.I. No. 307 of 1977); revoked (19.11.2003) by *Wildlife Act 1976 (Approved Traps, Snares and Nets) Regulations 2003* (S.I. No. 620 of 2003), reg. 5.

Certain use of scarecrows, decoys birdcalls and calls of wild mammals restricted.

35.—(1) Notwithstanding anything contained in this Act apart from this section, but subject to *section 42*, a person shall not—

F99[(a) use, for the purpose of hunting, repelling or scaring any wild bird or any wild animal—

(i) any live wild bird or live wild animal which is tethered or secured by braces or other similar appliance or which is confined in a cage or pen or which is blind, maimed or injured, or

(ii) any kite, light trap, balloon, aircraft (including model aircraft) or similar device,

or

(b) use, as a decoy for the purpose of hunting any wild bird or any wild animal, any live wild animal or live bird, or,]

(c) use a stuffed or artificial decoy in the form of any bird for the purpose of hunting any protected wild birds, other than F100[wood pigeons,] wild duck and wild geese, or

F101[(d) use an electrical or other instrument or appliance (including recording apparatus) emitting sound, for the purpose of hunting any wild bird or any wild animal.]

(2) *Subsection (1)* of this section shall not apply to the use of a whistle or similar instrument or appliance imitating, or emitting calls similar to, the calls of plover, wild duck or wild geese, which is operated (whether wholly or partly) manually or orally, for the purpose of hunting any of those wild birds.

(3) Notwithstanding the foregoing provisions of this section, the Minister may by order prohibit throughout the State or in any particular area thereof—

F102[((a) the use for hunting, repelling or scaring any wild bird or any wild animal of a species specified in the order of any stuffed or artificial decoy or any device, whistle, instrument or appliance which is of a particular type, class or description specified in the order, or,]

(b) the use of any orally or manually operated whistle or other instrument or appliance (not being recording apparatus) which imitates, or emits calls similar to, the calls of F103[plover,] wild duck or wild geese or emits recorded such calls.

F104[(4) Notwithstanding the foregoing provisions of this section, a decoy, vehicle or an instrument or appliance, including electrical or other recording apparatus emitting sound for the purpose of repelling, scaring or capturing any wild bird or any wild animal, may be used, pursuant to and in accordance with a licence granted in that behalf by the Minister, for scientific research or for another purpose approved of by the Minister.]

F105[(4A) Nothing in this section shall be construed as restricting—

- (a) the practice of falconry lawfully carried out in accordance with a licence or licences granted in accordance with *section 41* of this Act, or
- (b) the taking, killing or use of a wild animal, which is not a protected wild animal, for the purpose of, or while engaged in the practice of fishing.]

(5) The Minister may grant to a person a licence to use as a decoy a live wild bird which is of a species specified in the *Third Schedule* to this Act and which is confined in a cage or pen and every licence granted pursuant to this subsection shall have attached thereto the following conditions, namely—

- (a) the bird shall be so used only for hunting birds of the same species, and
- (b) the bird while being so used shall be regularly provided by the holder of the licence, or by someone on his behalf, with ample food and water and shall, when caged, only be kept in a cage which is of sufficient dimensions to enable it to move and exercise freely.

(6) A person who—

- (a) otherwise than pursuant to and in accordance with a licence granted by the Minister under *subsection (4) or (5)* of this section does anything prohibited by *subsection (1)* of this section,
- (b) contravenes an order made by the Minister under this section,

shall be guilty of an offence.

Annotations

Amendments:

F99 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 43(a)(i), S.I. No. 371 of 2001.

F100 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 43(a)(ii), S.I. No. 371 of 2001.

F101 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 43(a)(iii), S.I. No. 371 of 2001.

F102 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 43(b)(i), S.I. No. 371 of 2001.

F103 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 43(b)(ii), S.I. No. 371 of 2001.

F104 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 43(c)

F105 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 43(c), S.I. No. 371 of 2001.

Use of mechanically-propelled vehicles, vessels and aircraft in hunting prohibited.

36.—(1) Notwithstanding anything contained in this Act apart from this section F106[...], a person shall not hunt or disturb for the purpose of hunting—

(a) any F107[wild animal] by means of a mechanically-propelled vehicle, vessel or aircraft, whether it is being so propelled or is stationary,

(b) any F108[wild bird] by means of such a vehicle, vessel or aircraft while it is being so propelled.

(2) Notwithstanding *subsection (1)* of this section, a mechanically-propelled vehicle, vessel or aircraft may be used to capture or kill, pursuant to and in accordance with a licence granted in that behalf by the Minister and for such educational, scientific or other purposes as are specified in the licence, F109[wild birds or wild animals] of a species so specified.

(3) *Subsection (1)* of this section shall not make unlawful anything which section 3 (3) of the Whale Fisheries Act, 1937, permits to be done.

(4) Subject to *subsections (2)* and *(3)* of this section, a person who contravenes *subsection (1)* of this section shall be guilty of an offence.

F110[(5) In this section, ‘mechanically-propelled’ includes propulsion which is electrical or partly electrical and partly mechanical.]

Annotations

Amendments:

F106 Deleted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 44(a)(i), S.I. No. 371 of 2001.

F107 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 44(a)(ii), S.I. No. 371 of 2001.

F108 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000*, (38/2000), s. 44(a)(iii), S.I. No. 371 of 2001.

F109 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 44(b), S.I. No. 371 of 2001.

F110 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 44(c), S.I. No. 371 of 2001.

Hunting by night restricted.

37.—(1) Notwithstanding anything contained in this Act apart from this section but subject to *section 42*, a person shall not hunt—

(a) a woodcock at any time between sunset and sunrise,

(b) any other protected wild bird, other than a wild duck or a wild goose, or any protected wild animal at any time during any period beginning one hour after sunset and ending one hour before sunrise.

(2) *Subsection (1)* of this section shall not apply to—

(a) hunting protected wild birds pursuant to and in accordance with a licence granted by the Minister under *section 22 (9)* of this Act for a purpose mentioned in *paragraph (a)* or *(d)* of that section, or

(b) hunting protected wild animals pursuant to and in accordance with a licence granted by the Minister under *section 23 (6)* of this Act.

(3) A person who contravenes *subsection (1)* of this section shall be guilty of an offence.

Use of lamps, mirrors etc. in hunting prohibited.

F111[38.—(1) Any person who uses—

- (a) any lamp, light, torch, mirror or other artificial light-reflecting or dazzling device or appliance, or
- (b) any device for illuminating, image intensifying or heat seeking a target, or
- (c) any sighting device for night shooting, or
- (d) any device or appliance which is of a type, class or description specified in an order under *subsection (2)* of this section,

in hunting any protected wild bird or protected wild animal otherwise than while either—

- (i) attaching thereto any band, ring, tag or other marking device, or
- (ii) hunting for educational or scientific purposes or for any other purpose,

pursuant to and in accordance with a licence granted under this Act by the Minister, shall be guilty of an offence.

(2) (a) The Minister may by order declare a device or appliance which is of a type, class or description specified in the order to be a device or appliance to which *subsection (1)* of this section applies.

(b) The Minister may amend or revoke an order made under this subsection.]

Annotations

Amendments:

F111 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 45, S.I. No. 371 of 2001.

Burning of vegetation near woods or certain other land restricted.

39.—(1) A person shall not burn any vegetation growing within one mile of—

- (a) a wood which is not the property of such person, or
- (b) land to which an establishment order, a recognition order, a designation order or an agreement under *section 18* of this Act relates,

unless such person has, not less than seven days or more than thirty-five days before burning such vegetation, given notice of his intention to do so in writing to both the sergeant in charge of a Garda Síochána station in the Garda Síochána district in which the wood or land is situate and to—

- (i) in the case of a wood, the occupier of the wood,
- (ii) in the case of land to which an establishment order, a recognition order or an agreement under the said *section 18* relates, the Minister together with, in case the Minister is not the owner of the land, the occupier,
- (iii) in the case of land to which a designation order relates, the Minister.

(2) Where notice is given under *subsection (1)* of this section, the Minister or any other person to whom the notice is given may within three days after receiving the notice serve a counter-notice on the person by whom such notice was given objecting to the proposed burning on the ground that it is liable to cause damage to the wood or land concerned.

(3) A person shall not—

- (a) light a fire, or

(b) do any other act,

which causes, or is likely to cause, the burning of vegetation which is growing within one mile either of a wood which is not the property of such person or of land mentioned in *paragraph (b) of subsection (1)* of this section.

(4) Any person who burns vegetation, lights a fire or does any other act in contravention of this section shall be guilty of an offence.

(5) Where a person—

(a) burns any vegetation either in contravention of *subsection (1)* of this section or after giving the notice required by this section and receiving a counter-notice under this section,

(b) lights a fire or does any other act in contravention of *subsection (3)* of this section,

any injury occasioned by such burning, lighting or doing to,

(c) in case the contravention is a contravention of the said *subsection (1)*, any wood or land in respect of which a notice ought to have been or was served under this section, or

(d) in case the contravention is a contravention of the said *subsection (3)*, any wood which is not the property of such person or any land mentioned in *paragraph (b) of the said subsection (1)*,

shall be deemed to have been caused by the negligent act of that person, and damages to the extent of that injury shall be recoverable accordingly in any court of competent jurisdiction from that person by the owner of such wood or land, as the case may be.

F112[(6) In this section 'wood' includes a forest within the meaning of section 2 of the Forestry Act 2014.]

Annotations

Amendments:

F112 Substituted (24.05.2017) by *Forestry Act 2014* (31/2014), s. 31(2), S.I. No. 189 of 2017.

Destruction of vegetation on uncultivated land restricted.

F113[40.—(1) (a) It shall be an offence for a person to cut, grub, burn or otherwise destroy, during the period beginning on the 1st day of March and ending on the 31st day of August in any year, any vegetation growing on any land not then cultivated.

(b) It shall be an offence for a person to cut, grub, burn or otherwise destroy any vegetation growing in any hedge or ditch during the period mentioned in *paragraph (a)* of this subsection.]

(2) *Subsection (1)* of this section shall not apply in relation to—

(a) the destroying, in the ordinary course of agriculture or forestry, of any vegetation growing on or in any hedge or ditch;

(b) the cutting or grubbing of isolated bushes or clumps of gorse, furze or whin or the mowing of isolated growths of fern in the ordinary course of agriculture;

F114[(c) the cutting, grubbing or destroying of vegetation in the course of any works being duly carried out for reasons of public health or safety by a

Minister of the Government or a body established or regulated by or under a statute;

(cc) the clearance of vegetation in the course of fisheries development works carried out by the F115[Inland Fisheries Ireland] or a regional fisheries board in the exercise of its functions under the F115[Inland Fisheries Acts 1959 to 2010];]

(d) the destroying of any noxious weed to which the Noxious Weeds Act, 1936, applies;

F116[(e) the clearance of vegetation in the course of road or other construction works or in the development or preparation of sites on which any building or other structure is intended to be provided;]

(f) the removal or destruction of vegetation required by a notice served by the Minister under section 62 (1) of the Act of 1946 to be removed or destroyed;

F117[(g) the felling, cutting, lopping, trimming or removal of a tree, shrub, hedge or other vegetation pursuant to section 70 of the Roads Act 1993;]

but this subsection shall not operate to exclude from *subsection (1)* of this section anything done by burning.

F118[(3) The Minister may request from the person concerned details of any works carried out under *subsection (2)(c)* and such details shall be furnished to the Minister by that person together with a statement of the public health or safety factors involved.

(4) In any proceedings taken in respect of a contravention of this section consisting of the doing of any act, it shall be a good defence to prove that the doing of that act was necessary for the purpose of extinguishing or preventing the spread of a fire while it was in progress or for the purpose of saving human life or was necessary in any other emergency in respect of which that act was an appropriate measure.]

Annotations

Amendments:

F113 Substituted (12.03.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 46(a), S.I. No. 71 of 2001.

F114 Substituted and inserted (12.03.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 46(b), S.I. No. 71 of 2001.

F115 Substituted (1.07.2010) by *Inland Fisheries Act 2010* (10/2010), s. 8 and sch. 2 part 2 item 1, commenced as per s. 5(2) and S.I. No. 262 of 2010.

F116 Substituted (12.03.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 46(c), S.I. No. 71 of 2001.

F117 Inserted (18.07.2018) by *Heritage Act 2018* (15/2018), s. 8, commenced on enactment.

F118 Inserted (12.03.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 46(d), S.I. No. 71 of 2001.

Modifications (not altering text):

C15 Application of section restricted (18.07.2018 to 18.07.2020 or longer if continued in force) by *Heritage Act 2018* (15/2018), s. 7(1), (2), commenced on enactment.

Destruction or burning of vegetation on uncultivated land

7. (1) Notwithstanding section 40 (as amended by the Inland Fisheries Act 2010) of the Act of 1976, the Minister may make regulations, in relation to land referred to in that section, to allow the burning of vegetation during such period or periods during the month of March of such year in such part or parts of the State as specified in the regulations, subject to such conditions or restrictions specified in the regulations to ensure the protection of fauna or flora.

(2) Notwithstanding section 40 of the Act of 1976, the Minister may make regulations, in relation to land referred to in that section, to allow the cutting of vegetation growing in any hedge or ditch on the roadside during the month of August of such year as is specified in the regulations, subject to such conditions or restrictions specified in the regulations in relation to hedgerow husbandry, management or maintenance to ensure the protection of fauna or flora.

(3) A person to whom regulations under this section apply, or acting on behalf of such person, who does anything in contravention of the regulations commits an offence.

(4) (a) Subject to *paragraph (b)*, this section remains in force until the expiration of 2 years from the date of the passing of this Act and then shall expire.

(b) This section may be continued in force from time to time by a resolution of each House of the Oireachtas, passed before its expiry, for such further period not to exceed 3 years as is specified in the resolution.

(5) In this section “fauna or flora” means fauna and flora protected under Chapter III of Part II of the Act of 1976.

C16 Application of section restricted by *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011), reg. 49(13), as inserted (21.07.2015) by *European Communities (Birds and Natural Habitats) (Amendment) Regulations 2015* (S.I. No. 355 of 2015), art. 12, in effect as per reg. 1(4).

Prohibition on introduction and dispersal of certain species

49. ...

[(13) Where the Minister considers—

(a) that a species of flora or type of vegetation poses a threat to any of the objectives of the Birds and Habitats Directives, or

(b) that a population of a species of flora hosts or is likely to host a pathogen, disease, pest or parasite that poses or is likely to pose a threat to that species or to other species of flora and hence to securing compliance with the requirements of the Birds and Habitats Directives, and that the destruction of that population is a practical, appropriate and proportionate measure to reduce that threat,

the Minister may, notwithstanding anything contained in *Section 40* of the *Wildlife Act 1976*, grant a licence for the destruction, by such means as the Minister may specify, of vegetation comprising or containing that species at any time including, where he or she considers it warranted, during the period from 1 March to 31 August.]

C17 Application of section restricted (21.09.2011) by *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011), reg. 39(8), in effect as per reg. 1(3).

Threat response plans

39. ...

(8) Notwithstanding Section 40 of the Principal Act, the Minister may, as part of a threat response plan, authorise the destruction of vegetation on uncultivated land at any time and Section 40(1) of that Act shall not apply in relation to any destruction of vegetation on uncultivated land so authorised.

...

Editorial Notes:

E192 Previous affecting provision: application of section restricted (18.06.2010) by *European Communities (Birds and Natural Habitats) (Control of Recreational Activities) Regulations 2010* (S.I. No. 293 of 2010), reg. 13(7), in effect as per reg. 1(3); revoked (21.09.2011) by *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011), reg. 73(2), in effect as per reg. 1(3).

Miscellaneous

- Falconry etc. **41.**—(1) F119[Notwithstanding anything contained in section 22 or 23 of this Act, the Minister may make regulations]—
- (a) regulating hunting by means of eagles, hawks, falcons F120[owls, buzzards, kites, vultures, harriers and other birds of the orders *Accipitriformes*, *Falconiformes* and *Strigiformes*] trained to hawk for sport, or otherwise governing the practice of falconry,
 - (b) regulating the taking of eagles, hawks, falcons F120[owls, buzzards, kites, vultures, harriers and other birds of the orders *Accipitriformes*, *Falconiformes* and *Strigiformes*] for F121[breeding or] training to hawk for sport,
 - (c) regulating the possession, breeding, training to hawk for sport, display or exhibition of eagles, hawks, falcons F120[owls, buzzards, kites, vultures, harriers and other birds of the orders *Accipitriformes*, *Falconiformes* and *Strigiformes*]
 - (d) providing that a person shall not, save under and in accordance with a licence granted in that behalf by the Minister—
 - (i) engage in falconry,
 - F122[(ii) take, have in his possession or under his control any eagle, hawk, falcon, owl, buzzard, kite, vulture, harrier or other birds of the orders *Accipitriformes*, *Falconiformes* and *Strigiformes* or the eggs or young of any eagle, hawk, falcon, owl, buzzard, kite, vulture, harrier or other birds of the orders *Accipitriformes*, *Falconiformes* and *Strigiformes*,
 - (iii) engage in breeding any eagle, hawk, falcon, owl, buzzard, kite, vulture, harrier or other bird of the orders *Accipitriformes*, *Falconiformes* and *Strigiformes*.]
 - (e) providing for the payment of prescribed fees by applicants for licences granted by the Minister for the purposes of this section,
 - (f) providing for any matters ancillary or incidental to any of the foregoing.
- (2) The Minister may grant licences for the purposes of this section.

Annotations**Amendments:**

F119 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 47(a), S.I. No. 371 of 2001.

F120 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 47(b), S.I. No. 371 of 2001.

F121 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 47(c), S.I. No. 371 of 2001.

F122 Substituted and Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 47(d), S.I. No. 371 of 2001.

Editorial Notes:

E193 Power pursuant to section exercised (10.01.1984) by *Wildlife Act, 1976 (Birds of Prey) Regulations 1984* (S.I. No. 8 of 1984).

Damage by wild birds etc.

42.—(1) Where F123[serious] damage is being caused by protected wild birds or by protected wild animals to—

- (a) F124[food (including human food products and animal feeds)] livestock, poultry or agricultural crops (including vegetables or fruit) either on pasture or on cultivated land,
- (b) pen-reared wild birds on any land,
- (c) other fauna,
- (d) flora,
- (e) a woodland or a forest plantation, F125[...]
- (f) a fishery,
- F126[(g) buildings and other structures and their contents, or
- (h) aquaculture installations,]

notwithstanding any other provision of this Act, the Minister may cause to be taken by a person authorised by him in that behalf (who is hereby empowered to take) such steps, including entering on any land and the capture or killing of any such wild bird or any such wild animal, as he thinks appropriate to stop the damage.

F127[(1A) Any person who by act or omission impedes or obstructs a person authorised by the Minister in the lawful exercise of a power conferred by subsection (1) of this section shall be guilty of an offence.]

(2) Where damage described in subsection (1) of this section is being caused, the Minister may, before exercising in relation to the damage the powers conferred on him by subsection (1) of this section, require the person who is the owner or is in occupation of the property being damaged to give to him an indemnity indemnifying the Minister, or any person acting on his behalf, against all claims relating to anything done by or on behalf of the Minister by virtue of the said subsection (1) in relation to the damage.

(3) Where damage described in subsection (1) of this section is being caused, the owner or occupier of the property to which the damage is being caused, or any other person duly authorised by the owner or occupier in that behalf, may apply to the Minister for a permission under this section.

(4) An application to the Minister for a permission under this section shall include particulars of the damage in relation to which the application is made and in case the Minister decides to grant the permission, notwithstanding any other provision of this Act, the permission shall, subject to its terms, operate to enable the owner or occupier, or any other person duly authorised to act on his behalf, to F128[scare,] capture or kill any protected wild bird or any protected wild animal which the owner, occupier or other person reasonably believes is causing the damage and to take such other steps (if any) to stop the damage as are specified in the permission.

(5) An application for a permission under this section may be made to the Minister F129[...] or to any other person who is authorised for the time being by the Minister to receive such applications.

F130[(6) In addition to the foregoing, the following provisions shall apply in relation to a permission granted under this section:

- (a) the permission shall be valid only for such period and in relation to such area as are specified therein,
- (b) particulars of all protected wild birds and protected wild animals captured or killed pursuant to the permission shall be furnished to the Minister by the

person to whom the permission is given at such times and in such form as is specified in the permission,

- (c) notwithstanding any other provision of this Act, the Minister may grant the permission subject to conditions which may include one or more of the following:
- (i) that any scaring, capture or killing pursuant to the permission is to be effected by a specified means,
 - (ii) that any wild bird or any wild animal captured or killed pursuant to the permission shall have affixed to it a tag or other mark of identification to be specified by the Minister,
 - (iii) that any wild bird or any wild animal captured pursuant to the permission shall be removed to a place specified by the Minister for subsequent release or be disposed of in such other manner as may be so specified,
 - (iv) that any wild bird or any wild animal killed pursuant to the permission shall be removed to a place specified by the Minister or be disposed of in such other manner as may be so specified,
 - (v) that the total number of any particular species of protected wild bird or protected wild animal captured or killed pursuant to the permission shall be limited to such number as is specified in the permission.]

(7) F131[...]

Annotations

Amendments:

F123 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 48(a)(i), S.I. No. 371 of 2001.

F124 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 48(a)(ii), S.I. No. 371 of 2001.

F125 Deleted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 48(a)(iii), S.I. No. 371 of 2001.

F126 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 48(a)(iii), S.I. No. 371 of 2001.

F127 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 48(b), S.I. No. 371 of 2001.

F128 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 48(c), S.I. No. 371 of 2001.

F129 Deleted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 48(d), S.I. No. 371 of 2001.

F130 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 48(e), S.I. No. 371 of 2001.

F131 Repealed (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 5(c), S.I. No. 371 of 2001.

Land drainage schemes.

43.—(1) Where the Commissioners propose to undertake either—

(a) a drainage scheme within the meaning of the F132[*Arterial Drainage Acts, 1945 and 1995*], which is one to which this section applies, or

(b) any other land drainage scheme,

F133[*which is likely or liable to affect, or to interfere with, or is*] in respect of an area which includes land to which an establishment order, a recognition order or a

designation order applies, or land to which an agreement made under *section 18* of this Act applies F134[or land particulars of which have been included in a notice or order under Chapter II of Part III of the Wildlife (Amendment) Act, 2000], the Commissioners shall, before commencing the scheme, consult the Minister to ascertain if and to what extent the proposed scheme if carried out would affect or interfere with the suitability of the land affected by the scheme for a F135[nature reserve, refuge, natural heritage area or area subject to a notice served under section 16(2)(b) of the Wildlife (Amendment) Act, 2000], as may be appropriate, and take all practicable steps including, where appropriate, the limitation of the drainage scheme to minimise or avoid such effect or interference.

(2) This section applies to any drainage scheme within the meaning of the Arterial Drainage Act, 1945, not being a scheme of which a copy has been exhibited in accordance with section 5 of that Act before the commencement of this section.

Annotations

Amendments:

F132 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 49(a), S.I. No. 371 of 2001.

F133 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 49(b), S.I. No. 371 of 2001.

F134 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 49(c), S.I. No. 371 of 2001.

F135 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 49(d), S.I. No. 371 of 2001.

Unlawful hunting or entry on land and other miscellaneous matters.

44.—F136[(1) Any person, not being the owner or occupier of land, who, without the permission of the owner or occupier of the land or, in the case some other person is entitled to enjoy sporting rights over the land, that other person—

(a) hunts a wild bird or wild animal on the land,

(b) carries or brings on the land a thing mentioned in *section 72(7)* (as amended by section 65(d) of the Act of 2000), or

(c) shoots over or into the land,

commits an offence.]

(2) F136[Where a person who is neither the owner nor the occupier of land carries on the land a thing mentioned in *section 72(7)*,] any of the following persons may demand of him (and take when given) his name and address, namely:

(a) the owner or occupier of the land or a person authorised by him to exercise on his behalf the powers exercisable by such owner or occupier under this section,

(b) a person who is entitled to enjoy sporting rights over the land or some other person so authorised by him to exercise on his behalf the powers exercisable by him under this section,

F137[(bb) an authorised person or a member of the Garda Síochána,]

(c) the holder, or a person deemed pursuant to F138[*subsection (5) or (5A) of section 29*] of this Act to be the holder, of a licence granted under that section;

provided that the power conferred by this section on a person mentioned in *paragraph (c)* of this subsection shall only be exercisable on the production by him of

F139[...] a current licence granted to him pursuant to the said *section 29* F140[a current firearm certificate to which *subsection (5A)* of that section applies] or a current firearm certificate granted to him and endorsed in accordance with the requirements of *subsection (8)* of that section.

F141[(2A) An authorised person or a member of the Garda Síochána in exercising a power under *subsection (2)* of this section may seize any firearm, other weapon or device or part thereof.]

(3) A person who refuses or who fails to give his correct name and address on a demand therefor being duly made pursuant to this section or who on such demand gives a name and address which is false or misleading shall be guilty of an offence.

(4) Summary proceedings for an offence under this section may be prosecuted by—

- (a) a person who at the time at which the offence is alleged to have been committed (in this subsection referred to as the relevant time) is the owner or is in occupation of the land in relation to which the offence is alleged (in this subsection referred to as the relevant land),
- (b) any individual who as regards the relevant land is at the relevant time entitled to enjoy sporting rights over such land,
- (c) and in the name of the person who at the relevant time is the secretary of a recognised body which at such time is entitled to enjoy sporting rights over the relevant land;

provided that such an offence shall only be prosecuted by the secretary of a recognised body if,

- (i) prior to the relevant time a notice stating that sporting rights specified in the notice over land so specified have been reserved for the body is published in a newspaper circulating in the area in which the relevant land is situate, and
- (ii) the land so specified comprises or includes the relevant land.

(5) The Minister may by regulations declare any association, club, society or other body of persons which has for or amongst its objects the conservation of game to be a recognised body for the purposes of this section, and any body to which regulations under this subsection for the time being relate is in this section referred to as a recognised body.

(6) Subject to compliance with the requirements of the proviso to *subsection (4)* of this section, a notice published for the purposes of section 15 of the Game Preservation Act, 1930 (repealed by this Act), shall be regarded as having been published for the purposes of this Act.

F142[(7) In any proceedings for an offence under this section it shall not be necessary for the prosecutor to prove that, at the time of the offence, a defendant—

- (a) was on the land without lawful authority, or
- (b) was not the owner or occupier of the land,

and in case a defendant claims that he was on the land with lawful authority or is either the owner or occupier of the land, the onus of proving such authority, or that he is the owner or occupier of the land, shall be on the defendant.]

(8) In this section “game” means any exempted wild mammal or any protected wild bird which is of a species specified in an order under *section 24* of this Act.

Annotations**Amendments:**

- F136** Substituted (18.07.2018) by *Heritage Act 2018 (15/2018)*, s. 9(a), commenced on enactment.
- F137** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 50(b), S.I. No. 371 of 2001.
- F138** Substituted (10.07.2010) by *Wildlife (Amendment) Act 2010 (19/2010)*, s. 5(a), commenced on enactment.
- F139** Deleted (10.07.2010) by *Wildlife (Amendment) Act 2010 (19/2010)*, s. 5(b), commenced on enactment.
- F140** Inserted (10.07.2010) by *Wildlife (Amendment) Act 2010 (19/2010)*, s. 5(c), commenced on enactment.
- F141** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 50(c), S.I. NO. 371 of 2001.
- F142** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 50(d), S.I. No. 371 of 2001.

Editorial Notes:

- E194** Power pursuant to section exercised (1.09.1980) by *Wildlife Act, 1976 (Section 44) (Recognised Bodies) Regulations 1980* (S.I. No. 233 of 1980), in effect as per reg. 1(3).
- E195** Power pursuant to section exercised (11.11.1977) by *Wildlife Act, 1976 (Section 44) (Recognised Bodies) Regulations 1977* (S.I. No. 335 of 1977), in effect as per reg. 2.
- E196** Previous affecting provision: subs. (1)(c) substituted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 50(a), S.I. No. 371 of 2001; subs. (1) substituted as per F-note above.

PART III**REGULATION AND CONTROL OF WILDLIFE DEALING AND THE TRANSPORT, IMPORT AND EXPORT OF WILDLIFE**

Sale, purchase and possession of fauna restricted.

45.—F143[(1) A person who is not a licensed wildlife dealer shall not keep, transport, sell or exchange, keep for sale or exchange, offer for sale or exchange, purchase for resale or exchange or engage in taxidermy in respect of—

- (a) a protected wild bird or protected wild animal, at any stage of its life, whether alive or dead, or any parts products or derivatives of such wild bird or animal
- (b) the eggs of a protected wild bird or the eggs or spawn of a protected wild animal, or any parts, products or derivatives thereof,
- (c) fauna, at any stage of its life, whether alive or dead, set out in **F144[Part 1 or 2 of the First Schedule to the European Communities (Birds and Natural Habitats) Regulations 2011]**, and being fauna within the meaning of this Act,

and shall not publish or cause to be published any advertisement, catalogue, circular or price list likely to be understood as conveying that such a person buys or sells, or intends to buy or sell, or engages in taxidermy in respect of any protected wild bird or protected wild animal.]

(2) Subject to *subsections (3) and (8) of this section and to F145[sections 22(5), 23(7)(d), 31 and 42 of this Act]*, a person who is not a licensed wildlife dealer shall not have in his possession a protected wild bird or a protected wild animal, whether

alive or dead, or the eggs of a protected wild bird F146[or the eggs or spawn of a protected wild animal or any part, product or derivative thereof.]

(3) *Subsection (1)* of this section shall not apply to—

(a) the sale by a person F147[, who has obtained the prior permission of the Minister in writing so to do,] of any live specimen of a protected wild bird or protected wild animal solely for the purposes of propagating, or of improving the quality of, such species,

(b) the sale by a person of live hares to a coursing club affiliated to the Irish Coursing Club,

(c) the sale to a licensed wildlife dealer by a person of any protected wild bird or protected wild animal lawfully killed F147[or captured] by him,

F147[(cc) the sale by a person of any live perching bird which is a close-ringed specimen within the meaning of *section 31(4)* of this Act, and to which that section applies,]

(d) the sale by any person, who has obtained the prior permission of the Minister so to do, of any lawfully killed F147[or captured] such wild bird or wild animal.

(4) A person who is the owner, manager or person otherwise in charge of any hotel, guest house, inn, restaurant, public eating house, registered club within the meaning of the Registration of Clubs Acts, 1904 to 1962, or any other premises in which meals are provided for reward, shall not purchase a protected wild bird or a protected wild animal otherwise than from a licensed wildlife dealer, unless such person is himself such a dealer.

(5) A person mentioned in *subsection (4)* of this section who is not a licensed wildlife dealer shall keep in such form as the Minister approves a record of all purchases of protected wild birds or protected wild animals made in relation to the premises so mentioned and of which he is the owner or manager or of which he is otherwise in charge, and records kept pursuant to this subsection shall be kept available for inspection at the said premises by an authorised person on demand at any reasonable time.

(6) An authorised person may inspect and, if he thinks fit, take copies of any entry in any record kept pursuant to *subsection (5)* of this section.

F148[(7) A person who contravenes *subsection (1), (2), (4), F149[...] (12) or (13)* of this section or who fails to comply with the requirements of *subsection (5)* of this section shall be guilty of an offence.]

F148[(8) In any proceedings for an offence under this section in which it is alleged that *subsection (2) or (13)* of this section was contravened, it shall be a defence for the defendant to prove that—

F150[(a) the wild bird, wild animal or any other part, product or derivative of such wild bird or wild animal had been lawfully acquired by the defendant before the 1st day of June, 1977, or that it or they had been lawfully acquired from a person who had lawfully acquired it or them,

(b) in case the alleged offence relates to a protected wild bird or a protected wild animal or to any other part, product or derivative of such a wild bird or wild animal that it or they had lawfully been killed, captured or acquired by the defendant or had been lawfully acquired from a person who had lawfully killed, captured or acquired it or them.]]

F151[(9) Subject to *subsection (9A)* of this section, nothing in this section shall make unlawful the possession consequent upon any other thing which is—

(a) done pursuant to and in accordance with a licence or permission granted under this Act, or

(b) permitted to be done by or under any statute other than this Act, or

(c) otherwise lawfully done,

of a protected wild bird or a protected wild animal or the eggs of a protected wild bird or any eggs or spawn of a protected wild animal.]

F147[(9A) Where possession of a protected wild bird or a protected wild animal results from the unintentional capture of the bird or animal and such possession is continuing, the person in apparent possession or control of the bird or animal shall, at the direction of the Minister, release or otherwise dispose of the bird or animal in such manner as the Minister thinks fit.]

(10) References in this section to a protected wild bird or a protected wild animal shall, except in relation to taxidermy, be construed as including references to the flesh F147[, or to any other part, product or derivative,] of such a bird or animal, and in relation to taxidermy the said references in this section shall be construed as including references to the skin, plumage or any other part of such a bird or animal.

F152[(11) F153[...]

(12) A licensed wildlife dealer shall not sell, keep for sale, purchase for resale or engage in taxidermy in respect of eggs taken from the wild of a protected wild bird.

(13) Subject to *subsection (8)* of this section and to *section 22(5)* of this Act, a licensed wildlife dealer shall not have in his possession eggs taken from the wild of a protected wild bird.]

F147[(14) The Minister may by regulations—

(a) in relation to wild birds—

(i) apply this section, either generally or by reference to one or more species, to wild birds, or

(ii) apply this section generally to species of wild birds subject to the exclusion of one or more such species,

and

(b) in relation to wild animals—

(i) apply this section, either generally or by reference to one or more species, to wild animals which are not protected wild animals, or

(ii) apply this section generally to species of wild animals which are not protected wild animals, subject to the exclusion of one or more such species.]

Annotations

Amendments:

F143 Substituted (18.07.2005) by *European Communities (Natural Habitats) (Amendment) Regulations 2005* (S.I. No. 378 of 2005), reg. 2(4).

F144 Substituted (21.09.2011) by *European Communities (Birds and Natural Habitats) Regulations 2011* (S.I. No. 477 of 2011), reg. 56(6), in effect as per reg. 1(3).

- F145** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 51(b)(i), S.I. No. 371 of 2001.
- F146** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 51(b)(ii), S.I. No. 371 of 2001.
- F147** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 51(c)(i)-(iv), (f), (g), (i), S.I. No. 371 of 2001.
- F148** Substituted (6.12.1885) by *European Communities (Wildlife Act, 1976) (Amendment) Regulations 1985* (S.I. No. 397 of 1985), reg. 3(e)(ii), (iii), in effect as per reg. 1(2).
- F149** Deleted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 51(d), S.I. No. 371 of 2001.
- F150** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 51(e), S.I. No. 371 of 2001.
- F151** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 51(b)(i), (f), S.I. No. 371 of 2001.
- F152** Inserted (6.12.1885) by *European Communities (Wildlife Act, 1976) (Amendment) Regulations 1985* (S.I. No. 397 of 1985), reg. 3(e)(iv), in effect as per reg. 1(2).
- F153** Deleted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 51(h), S.I. No. 371 of 2001.

Editorial Notes:

- E197** Previous affecting provision: subs. (1) substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 51(a), S.I. No. 371 of 2001; substituted as per F-note above.
- E198** Previous affecting provision: application of subs. (1) modified (26.02.1997) by *European Communities (Natural Habitats) Regulations 1997* (S.I. No. 94 of 1997), reg. 22; revoked (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 75(b), S.I. No. 371 of 2001.
- E199** Previous affecting provision: subs. (1) substituted (6.12.1985) by *European Communities (Wildlife Act, 1976) (Amendment) Regulations 1985* (S.I. No. 397 of 1985), reg. 3(e)(i), in effect as per reg. 1(2); substituted as per E-note above.

Regulation and control of wildlife dealing.

46.—(1) Where the Minister is satisfied that it is in the interests of the conservation of any species of F154[wild bird or wild animal] so to do, subject to *subsection (5)* of this section, he may by regulations prohibit, or control in such manner as he considers appropriate and specifies in the regulations, the purchase or sale of that species for such period as may be so specified.

(2) The Minister may make regulations regulating or controlling the carrying on by licensed wildlife dealers of the business of wildlife dealing.

(3) Without prejudice to the generality of *subsection (2)* of this section, regulations under this section may—

- (a) prescribe conditions with regard to premises used by licensed wildlife dealers for wildlife dealing,
- (b) prescribe the form and period of validity of a wildlife dealer's licence and the form and period of validity of a renewal of such a licence,
- (c) specify the species of fauna which may be sold or purchased for resale by the holder of a wildlife dealer's licence pursuant to the licence,

F155[(cc) prescribe conditions with regard to the practice of taxidermy by the holder of a wildlife dealer's licence and to species of fauna generally, or any such species as may be specified in the regulations, used for the purpose of taxidermy,]

(d) require the keeping by the holder of a wildlife dealer's licence of such registers, books, records, invoices, receipts or other documents relating to the business of wildlife dealing as may be prescribed, and require any such document to be produced by such holder when required to do so by an authorised person at a reasonable time,

F156[(dd) require the holder of a wildlife dealer's licence to give to the Minister such particulars in writing from any documents kept by that holder under paragraph (d) of this subsection as the Minister may require and specify by notice in writing sent to the holder,]

(e) provide for the entry in such registers or records of such particulars relating to wildlife as may be prescribed,

(f) require the display in such premises of a current wildlife dealer's licence,

F157[(ff) prohibit the dealing in wild birds or wild animals which do not have the appropriate tag or mark as specified in regulations made under section 29 of the Principal Act,]

(g) provide that F158[a wild bird or a wild animal] shall not be confined, kept, or exposed for sale in a cage in such premises, or while it is being transported from one place to another by or on behalf of such dealer for purposes of display, sale or exhibition, unless the cage is of a prescribed size, type or description, and

(h) make any other provision which is ancillary or incidental to any of the foregoing.

(4) An authorised person may inspect and, if he thinks fit, take copies of any entry in any document produced pursuant to a requirement of regulations under this section.

(5) Regulations under this section which relate to a species of fish or aquatic invertebrate animal shall, in so far as they relate to such species, be made by the Minister only after consultation with the Minister for Agriculture and Fisheries.

F159[(5A) For the avoidance of doubt it is hereby declared that this section shall not apply to domesticated, farmed or other deer which are not wild animals.]

Annotations

Amendments:

F154 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 51(1)(a), S.I. No. 371 of 2001, subject to transitional provisions in subs. (2) and continuation in force of existing regulations made under section until revoked.

F155 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 51(1)(b)(i), S.I. No. 371 of 2001, subject to transitional provisions in subs. (2) and continuation in force of existing regulations made under section until revoked.

F156 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 51(1)(b)(ii), S.I. No. 371 of 2001, subject to transitional provisions in subs. (2) and continuation in force of existing regulations made under section until revoked.

F157 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 51(1)(b)(iii), S.I. No. 371 of 2001, subject to transitional provisions in subs. (2) and continuation in force of existing regulations made under section until revoked.

F158 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 51(1)(b)(iv), S.I. No. 371 of 2001, subject to transitional provisions in subs. (2) and continuation in force of existing regulations made under section until revoked.

F159 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 51(1)(c), S.I. No. 371 of 2001, subject to transitional provisions in subs. (2) and continuation in force of existing regulations made under section until revoked.

Editorial Notes:

E200 Power pursuant to section exercised (29.07.1977) by *Wildlife Act, 1976 (Wildlife Dealing) Regulations, 1977* (S.I. No. 253 of 1977).

Prohibition on wildlife dealing without wildlife dealer's licence.

47.—(1) Subject to *subsection (2)* of this section, a person shall not carry on business as a wildlife dealer except under and in accordance with a wildlife dealer's licence.

(2) *Subsection (1)* of this section shall not apply—

- (a) in relation to a person who immediately prior to the commencement of this section was carrying on business as a wildlife dealer, during the period of three months beginning on the commencement of this section,
- (b) in relation to a person who acquires (by purchase or otherwise) premises in which immediately prior to the acquisition the business of wildlife dealing was duly carried on, during the period of three months beginning on the date of the acquisition,
- (c) in relation to the personal representative of a licensed wildlife dealer, during the period of six months beginning on the date of the death of such dealer.

(3) A person who contravenes *subsection (1)* of this section shall be guilty of an offence.

Wildlife dealer's licence.

F160[**48.**—(1) The Minister may, on application being made in that behalf, if thought fit and on payment of the prescribed fee (if any), grant or renew a licence (in this Act referred to as a 'wildlife dealer's licence') authorising the applicant to carry on business as a wildlife dealer at premises specified in the licence.

(2) A wildlife dealer's licence shall, unless it is previously revoked, remain in force until the 31st day of July following the year in which it was granted or renewed.

(3) The Minister may, on application being made in that behalf, from time to time and on payment of the prescribed fee (if any), renew a licence granted under *subsection (1)* of this section.

(4) (a) Every applicant for the grant or renewal of a licence under this section shall have the right of appeal, to the District Court for the District in which the applicant resides, against the refusal of the Minister to grant or renew such a licence.

(b) Where, in the case of the refusal by the Minister to grant or renew a licence under this section, the applicant is the holder of a subsisting licence under this section, then the licence shall continue in force pending the determination of an appeal against such refusal, or the appeal ceases for any other reason.

(c) The Minister shall be notified in writing by registered post by the applicant of any such appeal not less than 21 days before the hearing of the appeal and shall have the right to appear and be heard at the hearing.

(d) Where an appeal under this subsection is allowed, the Minister shall grant or renew, as appropriate, a licence subject to any conditions which the judge allowing the appeal may require to be attached to the licence.

(5) The Minister may, in considering an application for the grant or renewal of a licence under this section, have regard to the following:

- (a) the suitability of the applicant, taking into account the purposes of this Act, to hold a wildlife dealer's licence,
- (b) the suitability of the premises, taking into account all relevant legislative provisions relating to food hygiene and food safety, where the applicant proposes to carry on the business of wildlife dealing, and
- (c) the ability of the applicant to comply with regulations made under *section 46(2)* of this Act which are for the time being in force.

(6) (a) The Minister may, having given 21 days' notice to the holder of a licence issued under this section, revoke the licence if the holder has failed to comply with the conditions thereof or with regulations made under *section 46(2)* of this Act which are for the time being in force, and shall notify the holder of the reasons for such revocation.

(b) The holder of a wildlife dealer's licence shall have the right to appeal, to the District Court for the District in which the applicant resides, within a period of 21 days in respect of the notification by the Minister to revoke the licence.

(c) Where, in the case of the notification of revocation by the Minister of a licence under this section, the holder of the licence appeals to the District Court in accordance with *paragraph (b)*, the licence shall continue in force pending the determination of an appeal against such revocation, or the appeal ceases for any other reason.

(d) The Minister shall be notified in writing by registered post of any appeal to which *paragraph (b)* relates not less than 21 days before the hearing of the appeal and shall have the right to appear and be heard at the hearing.

(7) The Minister may, on application being made in that behalf by the holder of the wildlife dealer's licence, amend a licence issued under this section.]

Annotations

Amendments:

F160 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 53, S.I. No. 371 of 2001.

Revocation of wildlife dealer's licence.

49.—(1) Where a person who holds a wildlife dealer's licence F161[is convicted of an offence under this Act,] the court by which the person is convicted may revoke the licence and such revocation shall be in addition to any other punishment imposed by the court in respect of the offence.

(2) Where a court revokes a wildlife dealer's licence pursuant to this section, the registrar or clerk of the court shall, as soon as may be, send to the Minister a copy of the court's order.

Annotations

Amendments:

F161 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 54, S.I. No. 371 of 2001.

Minister may publish list of wildlife dealers or notice of revocation.

50.—(1) The Minister may, if he thinks fit, publish from time to time and in such manner as he considers appropriate, a notice listing all persons who on the day specified in the notice were the holders of wildlife dealers' licences.

(2) Where a wildlife dealer's licence is revoked under *section 49* of this Act and the Minister has received a copy of the order revoking the licence, if either—

(a) no appeal is taken against the order and the period during which such an appeal may be taken has expired, or

(b) such an appeal is taken and the order is confirmed on appeal or the appeal is withdrawn,

the Minister may publish, in such manner as he considers appropriate, notice of the revocation.

Transport of packages etc. containing certain fauna.

51.—(1) This section applies to any package, parcel, box or other container which contains all or any of the following, namely:

(a) any protected wild bird or protected wild animal,

(b) the dead body, carcase or any other part either of a protected wild bird or protected wild animal,

(c) eggs of a protected wild bird.

F162[(cc) any species of flora to which an order under *section 21* of this Act for the time being applies.]

(2) Every package, parcel, box or other container to which this section applies shall, if transported, whether by hand or otherwise, be marked conspicuously either on the outside thereof or on a label attached thereto, so as clearly to indicate—

F163[(a) that the package, parcel, box or other container contains wild birds, wild animals or flora, as may be appropriate,

(aa) the number of specimens and the species, respectively, of wild birds, wild animals or flora so contained and, in respect of each specimen captured, picked or otherwise taken (as appropriate) within the State or the territorial seas of the State, the location of where it was so captured, picked or otherwise taken, and]

(3) Any person who consigns or transports a package, parcel, box or other container which is not marked in the manner required by *subsection (2)* of this section and who knows that the package, parcel, box or other container, as the case may be, contains any thing mentioned in *paragraph F164[(a), (b), (c) or (cc)]* of *subsection (1)* of this section shall be guilty of an offence.

(4) In any proceedings for an offence under this section, it shall be a good defence to show that a package, parcel, box or other container to which the alleged offence relates did not contain at the time of the alleged offence protected wild birds or protected wild animals other than the following, namely, a protected wild bird or an exempted wild mammal lawfully hunted by virtue of an order under *section 24* or *25* of this Act or the dead body or any part of such a protected wild bird or exempted wild mammal.

F165[(5) The Minister may by regulations provide that this section—

(a) shall also apply to any package, parcel, box or other container which contains all or any of the following, that is to say:

(i) a wild bird of a species specified in the regulations for that purpose;

(ii) a wild animal of a species specified in the regulations for that purpose;

- (iii) a species of flora specified in the regulations for that purpose;
- and which for the time being is not a species to which *subsections (1) to (4)* of this section apply,
- (b) shall not apply to any package, parcel, box or other container which contains all or any of the following, that is to say:
- (i) a wild bird of a species specified in the regulations for that purpose;
- (ii) a wild animal of a species specified in the regulations for that purpose;
- (iii) a species of flora specified in the regulations for that purpose;
- and which would, but for the regulations, be a species to which *subsections (1) to (4)* of this section would apply,]

Annotations**Amendments:**

F162 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 55(a), S.I. No. 371 of 2001.

F163 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000(38/2000)*, s. 55(b), S.I. No. 371 of 2001.

F164 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000(38/2000)*, s. 55(c), S.I. No. 371 of 2001.

F165 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000(38/2000)*, s. 55(d), S.I. No. 371 of 2001.

Modifications (not altering text):

C18 Application of section restricted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 59, S.I. No. 371 of 2001.

Saver in interest of public health and safety.

59.—Nothing in Part II, or section 51, of the Principal Act shall make unlawful any thing which is done pursuant to and in accordance with a licence granted in that behalf by the Minister for the purpose of preserving public health or public safety, including air safety.

Import of fauna and flora.

52.—(1) The Minister may, after consultation with the Minister for Agriculture and Fisheries, by regulations prohibit the importation F166[*into the State from outside the European Union*], save under and in accordance with a licence granted by or on behalf of the Minister under this section, of all or any of the following:

- (a) any wild animal or wild bird F167[, *at any stage of its life,*] of a species specified in the regulations,
- (b) the dead body or the carcase of a wild animal or wild bird which is of a species so specified,
- (c) any part, other than the carcase, F168[*or any product or derivative*] of a wild animal or wild bird which is F168[*a part, product or derivative*] so specified,
- (d) the eggs or spawn of a species of wild animal or wild bird which is so specified, F169[*(dd) any part, product or derivative of the eggs or spawn of a wild animal or wild bird which is a part, product or derivative so specified,*]
- (e) any plant of a species so specified,
- (f) the flowers F170[, *seeds, spores*] or roots of any such plant,

(g) any part, other than the flowers F171[, seeds, spores] or roots, F172[or any product or derivative] of any such plant which is F172[a part, product or derivative] so specified.

F173[(1A) (a) The Minister may, and shall in the case to which paragraph 1 of Article 12 of Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein relates, designate in writing the ports, airports and other places through which wild animals, wild birds or the eggs or spawn of wild animals or wild birds or plants, flowers, roots, seeds or spores of such plants may be imported into the State from outside the European Union and different places may be prescribed for different specified species.

(b) The Minister may designate in writing the ports, airports and other places through which any part, product or derivative of wild animals, wild birds or of the eggs or spawn of a wild animal or wild bird or of plants, flowers, roots, seeds or spores of such plants, of species specified in the regulations may be imported into the State from outside the European Union and different places may be prescribed for different specified species.

(c) A designation under this subsection may be amended or revoked in writing by the Minister.

(d) Notice of the making of a designation under this subsection, and every amendment or revocation thereof, shall be published in the *Iris Oifigiúil* as soon as possible after it has been made, amended or revoked, as the case may be.]

(2) The Minister may grant to a person a licence to import any thing the importation of which is prohibited by regulations made under *subsection (1)* of this section.

(3) The Minister may authorise a person to grant on his behalf a licence mentioned in *subsection (2)* of this section.

(4) Where an animal, plant or other thing is imported in contravention of this section, an officer of Customs and Excise may require any person (being the importer or carrier concerned) to export the animal, plant or other thing within a specified time, and if such person fails to comply with such requisition he shall be guilty of an offence and the animal, plant or other thing shall be killed or otherwise disposed of as the Minister directs.

F174[(4A) Any officer of An Post duly authorised in that behalf may detain and examine and, if considered necessary, open for that purpose any postal packet containing, or reasonably suspected by that officer of containing, any thing which is being imported in contravention of this section, and if a postal packet so detained contains any such thing, the officer of An Post shall dispose of the packet and its contents in accordance with the instructions of the Minister.]

(5) Nothing in this section or in *section 53* of this Act shall restrict, prejudice or affect the functions of the Minister for Agriculture and Fisheries under the Destructive Insects and Pests (Consolidation) Act, 1958, the Diseases of Animals Act, 1966, or the Fisheries Acts, 1959 to 1974, or the functions of the Minister for Health under section 31 of the Health Act, 1947, as amended by section 34 of the Health Act, 1953.

F175[(6) (a) The Minister may, if considered necessary, by regulations prohibit the possession or introduction of any species of wild bird, wild animal or wild flora or any part, product or derivative of such wild bird, wild animal or wild flora which may be detrimental to native species.

(b) Where non-native species of wild bird, wild animal or wild flora or any part, product or derivative of such wild bird, wild animal or wild flora have been introduced, the Minister shall, to the extent that it is feasible and appropriate, take measures to ensure that such introductions do not pose a potential hazard to native stocks.

(7) Any person who—

(a) turns loose, wilfully allows or causes to escape any species of wild animal or the spawn of such wild animal or wild bird or the eggs of such wild bird,

(b) transfers any species of wild animal or the spawn of such wild animal or wild bird or the eggs of such wild bird from any place in the State to any other place in the State for the purpose of establishing it in a wild state in such other place,

(c) plants or otherwise causes to grow in a wild state in any place in the State any species of flora, or the flowers, roots, seeds or spores of flora,

otherwise than under and in accordance with a licence granted in that behalf by the Minister shall be guilty of an offence.

(8) For the purposes of *subsection (7)*, any reference to wild animals, wild birds, plants, flowers, roots, seeds or spores refers only to exotic species thereof.]

Annotations

Amendments:

F166 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 56(a)(i), S.I. No. 371 of 2001.

F167 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 56(a)(ii), S.I. No. 371 of 2001.

F168 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 56(a)(iii), S.I. No. 371 of 2001.

F169 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 56(a)(iv), S.I. No. 371 of 2001.

F170 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 56(a)(v), S.I. No. 371 of 2001.

F171 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 56(a)(vi), S.I. No. 371 of 2001.

F172 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 56(a)(vi), S.I. No. 371 of 2001.

F173 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 56(b), S.I. No. 371 of 2001.

F174 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 56(c), S.I. No. 371 of 2001.

F175 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 56(d), S.I. No. 371 of 2001.

Editorial Notes:

E201 Power pursuant to subs. (1A) exercised (13.07.2011) by *Wildlife (Import and Export of Fauna and Flora) (Designation of Ports and Airports) (Amendment) Regulations 2011* (S.I. No. 377 of 2011).

E202 Power pursuant to subs. (1A) exercised (31.07.2001) by *Wildlife (Import and Export of Fauna and Flora) (Designation of Ports and Airports) Regulations 2001* (S.I. No. 375 of 2001).

E203 Power pursuant to section exercised (1.01.1990) by *Wildlife Act, 1976, (Control of Importation of Wild Animals and Wild Birds), Regulations 1989* (S.I. No. 296 of 1989), in effect as per reg. 2.

Export of fauna and flora.

53.—(1) Subject to *section 52 (5)* of this Act, the Minister may, after consultation with the Minister for Agriculture and Fisheries, by regulations prohibit the export F176[from the State to outside the European Union], save under and in accordance

with a licence granted by or on behalf of the Minister under this section, of all or any of the following:

- (a) F177[any wild bird or any wild animal, at any stage of its life,] of a species specified in the regulations,
- (b) the dead body or the carcass either of a F178[wild bird or wild animal] of a species so specified,
- (c) any part, other than the carcass, F179[or any product or derivative] of a wild animal or wild bird which is F179[a part, product or derivative] so specified,
- (d) the eggs or spawn of a species of wild animal or wild bird which is so specified,
- F180[[(dd) any part, product or derivative of the eggs or spawn of a wild animal or wild bird which is a part, product or derivative so specified,]
- (e) wild plants which are of a species which is so specified F181[...]
- (f) the flowers F182[, seeds, spores] or roots of any such wild plant,
- (g) any part, other than the flowers F183[, seeds, spores] or roots, F184[or any product or derivative] of any such plant which is F184[a part, product or derivative] so specified.

F185[(1A) (a) The Minister may, and shall in the case to which paragraph 1 of Article 12 of Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein relates, designate in writing the ports, airports and other places through which wild animals, wild birds or the eggs or spawn of wild animals or wild birds or plants, flowers, roots, seeds or spores of such plants may be exported from the State to outside the European Union and different places may be prescribed for different specified species.

- (b) The Minister may designate in writing the ports, airports and other places through which any part, product or derivative of wild animals, wild birds or of the eggs or spawn of a wild animal or wild bird or of plants, flowers, roots, seeds or spores of such plants, of species specified in the regulations may be exported from the State to outside the European Union and different places may be prescribed for different specified species.
- (c) A designation under this subsection may be amended or revoked in writing by the Minister.
- (d) Notice of the making of a designation under this subsection, and every amendment or revocation thereof, shall be published in the *Iris Oifigiúil* as soon as possible after it has been made, amended or revoked, as the case may be.]

(2) The Minister may grant to a person a licence to export any thing the export of which is prohibited by regulations made under *subsection (1)* of this section.

(3) The Minister may authorise a person to grant on his behalf a licence mentioned in *subsection (2)* of this section.

F186[(4) Any officer of An Post duly authorised in that behalf may detain and examine and if necessary open for that purpose any postal packet containing, or suspected by that officer of containing, any thing which is being exported in contravention of this section, and if a postal packet so detained contains any such thing, the officer of An Post shall dispose of the packet and its contents in accordance with the instructions of the Minister.]

(5) Nothing in this section shall restrict, prejudice or affect the functions of the Minister for Agriculture and Fisheries under the Agricultural and Fishery Products

(Regulation of Export) Act, 1947, or functions which are for the time being transferred to and vested in the Minister for Industry and Commerce by an order under section 5 of that Act.

Annotations

Amendments:

- F176** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 57(a)(i), S.I. No. 371 of 2001.
- F177** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 57(a)(ii), S.I. No. 371 of 2001.
- F178** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 57(a)(iii), S.I. No. 371 of 2001.
- F179** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 57(a)(iv), S.I. No. 371 of 2001.
- F180** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 57(a)(v), S.I. No. 371 of 2001.
- F181** Deleted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 57(a)(vi), S.I. No. 371 of 2001.
- F182** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 57(a)(vii), S.I. No. 371 of 2001.
- F183** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 57(a)(viii), S.I. No. 371 of 2001.
- F184** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 57(a)(viii), S.I. No. 371 of 2001.
- F185** Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 57(b), S.I. No. 371 of 2001.
- F186** Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000*, (38/2000), s. 57(c), S.I. No. 371 of 2001.

Editorial Notes:

- E204** Power pursuant to subs. (1A) exercised (13.07.2011) by *Wildlife (Import and Export of Fauna and Flora) (Designation of Ports and Airports) (Amendment) Regulations 2011* (S.I. No. 377 of 2011).
- E205** Power pursuant to subs. (1A) exercised (31.07.2001) by *Wildlife (Import and Export of Fauna and Flora) (Designation of Ports and Airports) Regulations 2001* (S.I. No. 375 of 2001).
- E206** Power pursuant to section exercised (7.08.1979) by *Wildlife Act, 1976 (Control of Export of Fauna) Regulations 1979* (S.I. No. 235 of 1979).
- E207** Previous affecting provision: subs. (4) amended (13.07.1983) by *Postal and Telecommunications Services Act 1983* (24/1983), s. 8(1) and sch. 4 part I, commenced on enactment; substituted as per F-note above.

F187[Regulation of trade in wild flora and fauna and CITES Regulations.

53A.—(1) The Minister is hereby designated, for the purposes of paragraph 1(a) of Article 13 of Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (in this section referred to as ‘the Council Regulation’), as the management authority with primary responsibility in relation to that Regulation.

(2) (a) The Minister may, for the purposes of paragraph 1(b) of Article 13 of the Council Regulation, designate in writing from time to time additional management authorities and other competent authorities.

- (b) The Minister shall, for the purposes of paragraph 2 of Article 13 of the Council Regulation, designate in writing from time to time one or more scientific authorities.
- (c) A designation under *paragraph (a) or (b)* of this subsection may be amended or revoked in writing by the Minister.
- (d) Notice of the making of a designation under this subsection, and every amendment or revocation thereof, shall be published in the *Iris Oifigiúil* as soon as possible after it has been made, amended or revoked, as the case may be.
- (3) The import, export, or any attempts thereat, of any specimen of a species listed in the annexes to the CITES Regulations without the required valid permits or certificates, or with forged, altered or otherwise fraudulent permits or certificates, shall be prohibited.
- (4) (a) The Minister may make regulations to prohibit the holding or possession of any specimen of a species listed in annexes to the CITES Regulations.
- (b) It shall be an offence to hold or possess any such specimen contrary to any regulations made under *paragraph (a)* of this subsection.
- (5) (a) Subject to *subsection (6)*, a person who, in contravention of the CITES Regulations—
- (i) imports, introduces from the sea, exports, re-exports, engages in movement, holds or possesses any specimen of a species listed in annexes to the CITES Regulations without the required valid permits or certificates, or with forged, altered or otherwise fraudulent permits or certificates, or
 - (ii) purchases, offers to purchase, acquires for commercial purposes, displays to the public for commercial purposes, uses for commercial gain, sells, keeps for sale, offers for sale or transports for sale contrary to Article 8 of the Council Regulation a specimen of a species listed in Annex A to the CITES Regulations, or
 - (iii) purchases, offers to purchase, acquires for commercial purposes, displays to the public for commercial purposes, uses for commercial gain, sells, keeps for sale, offers for sale or transports for sale contrary to Article 8 of the Council Regulation a specimen of a species listed in Annex B to the CITES Regulations imported or acquired contrary to the CITES Regulations, or
 - (iv) fails to comply with any condition or requirement of a permit or certificate, or
 - (v) fails to comply with the requirements of paragraph 1, 4 or 5 of Article 9 of the Council Regulation relating to the holding or transport or movement of live specimens, or
 - (vi) makes false or misleading statements or declarations with a view to obtaining a permit or certificate, or of clearing specimens for import or export, or
 - (vii) furnishes a document or information which is false with a view to obtaining a permit or certificate, or falsifies or alters any permit or certificate, or uses or furnishes a false or invalid permit or certificate or one altered without authorisation, or
 - (viii) fails to make an import notification or makes a false import notification contrary to Article 4 of the Council Regulation, or

- (ix) uses any specimen of a species listed in Annex A to the CITES Regulations otherwise than in accordance with the authorisation given at the time of issue of the import permit or subsequently, or
- (x) trades in artificially propagated plants contrary to the provisions of Article 7 of the Council Regulation, or
- (xi) uses a permit, certificate or import notification for any specimen other than for which it was issued, or
- (xii) fails to disclose rejection of an application for an import, export or re-export permit or certificate in accordance with Article 6 of the Council Regulation, or
- (xiii) engages in transit or transshipment of any specimen of a species listed in annexes to the CITES Regulations without the required valid permit or certificate or document, or without satisfactory proof of the existence of such permit or certificate or document, as appropriate,

shall be guilty of an offence.

- (b) A person who aids or abets the commission of an offence under *subsection (4)(b) or (5)(a)* shall be guilty of an offence.

(6) Nothing in this section shall make unlawful anything which is duly done under, and in accordance with the terms of, any certificate or general derogation granted pursuant to the CITES Regulations.

(7) Nothing in this section shall prevent the application of the Customs Acts to offences committed under the said Acts in relation to the import, export, or any attempt thereat, of prohibited specimens in contravention of *subsection (3)* of this section.

- (8) (a) A word or expression that is used in this section and is also used in the CITES Regulations shall, unless the contrary intention appears, have in this section the meaning that it has in the CITES Regulations.

- (b) For the purposes of this section, references to a permit or certificate include references to—

- (i) an import permit of the kind referred to in Article 4 of the Council Regulation,
- (ii) an export permit or a re-export certificate of the kind referred to in Article 5 of the Council Regulation,
- (iii) a certificate of any of the kinds referred to in Article 10 of the Council Regulation, or
- (iv) a label of the kind referred to in paragraph 4 of Article 7 of the Council Regulation.]

Annotations

Amendments:

F187 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 58, S.I. No. 371 of 2001.

Editorial Notes:

E208 The section heading is taken from the amending section in the absence of one included in the amendment.

F188 [Simplified procedures for export or re-export of dead specimens of species listed in Annexes B and C to Council Regulation

53B. (1) A person may avail of the simplified procedures in respect of the export or re-export of a particular species only if the person is the subject of an entry in the register in respect of the species.

(2) The management authority shall establish and maintain a register (in this section referred to as “the register”) which shall be in such form (including electronic form) as the management authority considers appropriate.

(3) An entry in the register shall—

(a) contain—

(i) the name of a person who is entitled to trade a species specified under *paragraph (b)* under the simplified procedures, and

(ii) the address at which the person referred to in *subparagraph (i)* ordinarily resides, and

(b) specify the species to which the entitlement of the person referred to in *subparagraph (i)* relates.

(4) The management authority shall, from time to time, but in any event at least every five years, review the register.

(5) A person may apply to the management authority to be the subject of an entry in the register in respect of a particular species.

(6) An application under *subsection (5)* shall be made in writing or by electronic means and shall—

(a) include the name of the applicant and the address at which the applicant ordinarily resides,

(b) specify the species that the person wishes to trade under the simplified procedures, and

(c) contain such other information as the management authority may reasonably require for the purpose of determining the application.

(7) The management authority, on receipt of an application made in accordance with *subsection (6)*, shall request the scientific authority to provide it with an opinion in writing as to whether the export or re-export of the species specified in an application will or will not have a detrimental impact on the conservation of the species concerned.

(8) Where the opinion of the scientific authority under *subsection (7)* is that the export or re-export concerned will have a detrimental impact on the conservation of the species concerned—

(a) the management authority shall notify the applicant, in writing, that it proposes to refuse the application, which notification shall be accompanied by a copy of the opinion of the scientific authority and a statement of the effect of *paragraph (b)*, and

(b) the applicant may, within 14 days of the date of the notification under *paragraph (a)*, request the management authority, in writing, to review its proposal, which request shall be accompanied by representations in writing stating the reasons why the applicant considers that the export or re-export concerned will not have a detrimental impact on the conservation of the species concerned.

(9) The management authority, on receipt of a request made in accordance with *subsection (8)(b)*, shall request the scientific authority to consider the applicant’s representations under that paragraph and to provide it with a further opinion in

writing as to whether the export or re-export concerned will or will not have a detrimental impact on the conservation of the species concerned.

(10) Where the management authority, having considered an application made in accordance with *subsection (6)*, is not satisfied that the requirements of Article 19 of the Commission Regulation will be complied with by the applicant—

(a) the management authority shall notify the applicant, in writing, that it proposes to refuse the application, which notification shall be accompanied by a statement of the reasons for the proposal and of the effect of *paragraph (b)*, and

(b) the applicant may, within 14 days of the date of the notification under *paragraph (a)*, request the management authority, in writing, to review its proposal, which request shall be accompanied by representations in relation to the reasons referred to in that paragraph.

(11) The management authority shall make an entry in the register in respect of an applicant and species only where—

(a) the scientific authority has advised under *subsection (7)* or *(9)*, as the case may be, that the export or re-export concerned will not have a detrimental impact on the conservation of the species concerned, and

(b) the management authority is satisfied, on the basis of the application or its consideration of representations made in accordance with *subsection (10)(b)*, that the requirements of Article 19 of the Commission Regulation will be complied with by the applicant.

(12) Where the management authority makes an entry in the register under *subsection (11)*, it shall, as soon as practicable, inform the registered person of the fact, and of the date of the making of the entry.

(13) Where—

(a) *subsection (8)* applies, and the applicant does not make a request in accordance with *subsection (8)(b)*, or the further opinion of the scientific authority under *subsection (9)* is that the export or re-export concerned will have a detrimental impact on the conversation of the species concerned, or

(b) *subsection (10)* applies, and the applicant does not make a request in accordance with *subsection (10)(b)*, or the management authority, having considered such representations, is not satisfied that the requirements of Article 19 of the Commission Regulation will be complied with by the applicant,

the management authority shall refuse the application and inform the applicant of the refusal and of the reasons for it.

(14) The management authority may, subject to this section, remove an entry in the register—

(a) at the request in writing of the registered person, or

(b) where—

(i) after the date of the making of the entry in the register, the registered person has not availed of the simplified procedures for any continuous period of 12 months, or

(ii) the management authority is not satisfied that the registered person is complying, or has complied with, the requirements of Article 19 of the Commission Regulation.

(15) (a) The management authority, where it proposes to remove, under *subsection 14(b)*, an entry in the register, shall notify the registered person concerned

- in writing of the proposal, which notification shall be accompanied by a statement of the reasons for the proposal and of the effect of *paragraph (b)*.
- (b) Where *paragraph (a)* applies, the registered person may, within 30 days of the date of the notification under that paragraph, make representations, in writing, in relation to the proposal, which representations may—
- (i) in the case of a proposal to remove, under *subsection (14)(b)(i)*, the entry, give reasons why the simplified procedures have not been availed of, and
- (ii) in the case of a proposal to remove, under *subsection 14(b)(ii)*, the entry, include proposals from the registered person to rectify any failure to comply with the requirements of Article 19 of the Commission Regulation.
- (16) The management authority shall consider any representations made in accordance with *subsection (15)* and—
- (a) decide whether to remove the entry in the register, and
- (b) notify the registered person of the decision under *paragraph (a)* and of the reasons for it.
- (17) Where a decision under *subsection (16)(a)* is to remove the entry in the register, the registered person may, within 14 days of the date of the notification under *subsection (16)(b)*, of the decision, request the management authority, in writing, to have the decision reviewed, which request shall be accompanied by a statement of the reasons why the entry should not be removed.
- (18) On receipt of a request under *subsection (17)* for a review, the management authority shall appoint an officer of the management authority to carry out the review of the decision and the officer so appointed—
- (a) shall not be the person who made the decision the subject of the review, and
- (b) shall be of a grade senior to the grade of the person who made the decision concerned.
- (19) The officer appointed under *subsection (18)*, having considered the statement under *subsection (17)*, shall—
- (a) confirm the decision, or
- (b) cancel the decision.
- (20) The decision of the officer under *subsection (19)* shall be notified, in writing, to the registered person as soon as practicable after the decision has been made.
- (21) The management authority shall remove an entry in the register as soon as practicable after—
- (a) receipt by it of a request made in accordance with *subsection (14)(a)* in respect of the entry,
- (b) the expiry of the period referred to in *paragraph (b)* of *subsection (15)*, where no request is made in accordance with that paragraph,
- (c) the making a decision under *subsection (16)(a)* to remove the entry, where no request is made in accordance with *subsection (17)*, or
- (d) a decision to remove the entry is confirmed under *subsection (19)(a)*.
- (22) The management authority, as soon as practicable after removing an entry in the register under *subsection (21)*, shall notify the person who was the subject of the entry, in writing, of—

- (a) the removal of the entry,
- (b) the date on which the entry was removed, and
- (c) the effect of *subsection (23)*.

(23) Where an entry in the register is removed under *subsection (22)*—

- (a) any partially completed export permits or re-export certificates provided under the simplified procedures to the person who was the subject of the entry shall cease to be valid, and
- (b) the person who was the subject of the entry shall, within 14 days of the date of the notification under *subsection (22)*, return to the management authority any such permits or re-export certificates.

(24) The Minister may, with the consent of the Minister for Public Expenditure and Reform, prescribe fees (if any) payable in respect of providing under the simplified procedures to a registered person partially completed export permits or re-export certificates.

(25) In this section—

‘Commission Regulation’ means Commission Regulation (EC) No. 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No. 338/97 on the protection of species of wild fauna and flora by regulating trade therein, together with any amendments to or replacements of those Regulations;

‘Council Regulation’ means Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein together with any amendments to or replacements of those Regulations;

‘management authority’ means the management authority designated under *section 53A(1)*;

‘registered person’ means a person who is the subject of an entry in the register;

‘scientific authority’ means a person designated under *section 53A(2)(b)*;

‘simplified procedures’ mean the simplified procedures, referred to in Article 19 of the Commission Regulation, for the export or re-export of a dead specimen of a species, including any part or derivative thereof, listed in Annexes B and C to the Council Regulation;

‘species’ means a species listed in Annexes B and C to the Council Regulation.

(26) A reference in this section to the trade, export or re-export of a particular species is a reference to the trade, export or re-export of dead specimens of the species, including any parts or derivatives thereof.

(27) A word or expression that is used in the Commission Regulation or the Council Regulation and is also used in this section has, unless the context otherwise requires, the same meaning in this section as it has in the Commission Regulation or the Council Regulation.

(28) For the purposes of *subsections (3)(a)(ii)* and *(6)(a)*, a company within the meaning of the Companies Acts shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.]

Annotations**Amendments:**

F188 Inserted (1.08.2019) by *European Communities (Cites Simplified Procedures) Regulations 2019* (S.I. No. 411 of 2019), reg. 2(b).

Saver in relation to Customs Acts.

54.—No order or regulation made under or thing done in accordance with the provisions of this Act shall absolve the importer, exporter or other person concerned with the import or export of any animal, plant or other thing from complying with the relevant requirements of the Customs Acts in regard to the animal, plant or other thing concerned.

PART IV

LAND AND WATERS

Land purchase orders.

55.—(1) For the purposes of this section—

“land for transfer” means—

(a) in case the Minister is satisfied that the relevant land is land held in commonage and where at least one of the owners of the land does not wish to sell pursuant to this section to the Minister his interest in the land, all that land other than the part thereof which is to be taken by way of exchange under this section,

(b) in any other case, the relevant land;

“land held in commonage” means land which is held by two or more persons (in this section referred to as owners in common) in common in undivided shares, whether as joint tenants or as tenants in common;

“relevant land” means the whole of the land which either is, or is proposed to be, as the context may require, the subject of an order under this section;

“remaining land” means, in relation to relevant land which the Minister is satisfied is land held in commonage and as regards which at least one owner does not wish to sell pursuant to this section his interest in the land to the Minister, all the land, apart from the land for transfer, comprised in the relevant land;

“State annuity” has the same meaning as in section 12 of the Act of 1946.

(2) Where—

(a) the Minister wishes to purchase land, and

F189[(b) the purpose for which the Minister proposes to use the land is a purpose of the *Wildlife Acts, 1976 and 2000*, and]

(c) the ownership of the land is registered under the Registration of Title Act, 1964, and,

(d) (i) the vendor claims to have an interest in the land which enables him to offer to the Minister vacant possession of the land, or

(ii) the vendor claims that the land is land held in commonage and that he has an interest therein which enables him to offer to the Minister an undivided share therein, and

(e) the Minister receives—

- (i) in every case, a statement in writing signed by the vendor specifying the grounds on which his claim is based and stating that the vendor is willing to sell to the Minister the interest he claims to have in the land for a price agreed between the vendor and the Minister and specified in the statement,
- (ii) in case the vendor claims that the land is land held in commonage by him with only one other owner in common and where that owner is not willing to sell to the Minister his interest in the land, in addition to the aforesaid statement, a statement in writing signed by the other person concerned specifying the grounds on which his claim to ownership in common is based and stating that he is willing to exchange for his interest in the whole of the land a sole or exclusive interest in a part of the land which shall be specified in the statement,
- (iii) in case the vendor claims that the land is land held in commonage by him with two or more other owners in common and where those owners in common are not willing to sell to the Minister their interests in the land, in addition to the statement described in *subparagraph (i)* of this paragraph, a statement in writing by each person concerned and signed by him specifying the grounds on which his claim to ownership in common is based and stating that he is willing to exchange for his interest in the whole of the land an undivided share in common with the other owners in common apart from the vendor in a part of the land, which shall be specified in the statement,

the Minister may, in his absolute discretion, make an order under this section (subsequently in this section referred to as a purchase order) in relation to the land.

(3) A purchase order shall not be made by the Minister unless—

- (a) the Minister has caused a notice in the prescribed form of his intention to make the order and specifying the relevant land to be published at least two months previously in the *Iris Oifigiúil* and in at least one newspaper circulating in the locality in which the said land is situated and copies of the notice have been duly served on the vendor of the said land and on all other persons appearing to the Minister to have an interest in the said land, and
- (b) the Minister is unaware of any claim, other than the vendor's, to an interest in the land, or if there is a burden registered in a register maintained under the Registration of Title Act, 1964, which affects the land, or where the Minister is aware of any other such claim, the burden or claim has been disposed of to the satisfaction of the Minister, the owner of the burden or the person making the claim, as may be appropriate, and any other person known to the Minister to be concerned.

(4) Where the Minister makes a purchase order the following provisions shall have effect:

- (a) the order shall without further assurance vest in the Minister in fee simple the land for transfer free from all rights (including any public right) charges, burdens or other incumbrances or interests and from the claims of all persons who are interested in the said land, whether in respect of incumbrances or interests therein or otherwise howsoever, other than—
 - (i) in case the said land is subject to a State annuity, that State annuity,
 - (ii) such burdens (if any) as are specified in the order,
- (b) in case the relevant land is land held in commonage, as on and from the date of the order, the land shall cease to be held in common by the owners in common, and—

- (i) in case immediately before the making of the order the relevant land was held by the vendor and two or more other owners in common (being owners in common who are not willing to sell to the Minister their interests in the land), the order shall, without further assurance vest in fee simple in the other owners in common, and in only those owners in common, the remaining land which shall be held by them as tenants in common in shares proportionate to the proportions of their former shares, one to another, in the relevant land,
 - (ii) in case immediately before the making of the order the relevant land was held by the vendor with only one other owner in common (being an owner in common who is not willing to sell to the Minister his interest in the land), the order shall vest in fee simple in the other owner in common the remaining land,
- (c) in respect of the interest of the vendor in the relevant land—
- (i) the order shall operate, as on and from the date thereof, to transfer and attach to the amount payable by the Minister to the vendor pursuant to *subsection (6)* of this section all estates, trusts and incumbrances subsisting in respect of that interest immediately before the date of the order, and
 - (ii) the said amount shall as respects any rights or claims existing immediately before the date of the order, to or against the interest, represent that interest for all purposes,
- (d) in respect of the interest of owners in common (if any) apart from the vendor in the relevant land—
- (i) the order shall operate, as on and from the date of the order, to transfer to the interest of those owners in common in the remaining land all estates, trusts and incumbrances subsisting in respect of the interest of those owners in common in the relevant land immediately before the date of the order, and
 - (ii) the interest of those owners in common in the remaining land shall, as respects any rights or claims existing immediately before the date of the order to or against the interest of those owners in common in the relevant land, represent the last-mentioned interest of those owners in common for all purposes.
- (5) Where land for transfer becomes vested in the Minister by virtue of an order made under this section, the registering authority under the Registration of Title Act, 1964, shall, upon production of a copy of the order under the official seal of the Minister, register the Minister in the appropriate register maintained under that Act as owner (within the meaning of that Act) of the land and the authority shall in addition cause such other alterations (if any) to be made in the appropriate such register as are appropriate having regard to the terms of the order.
- (6) On the making of a purchase order the Minister shall pay—
- (a) in case the Minister is then unaware of any claim to an interest in the land concerned, other than that of the vendor, or in case the Minister is aware of such other claim, either the Minister has received a statement referred to in *subparagraph (ii)* or *subparagraph (iii)* of *subsection (2) (e)* of this section or it has been agreed between the Minister and the person making the other claim that no payment is to be made by the Minister in respect of the claim, to the vendor an amount equal to the agreed purchase price,
 - (b) in case a claim or claims to such an interest other than the claim of the vendor has or have been made and the Minister has agreed to make a payment in respect of such other claim, to any person making such other claim the amount which has been agreed in regard thereto and to the vendor such

amount as has been agreed between the Minister and the vendor having regard to the other claim or claims, as the case may be.

(7) A person who immediately prior to the making of a purchase order is entitled to an interest in the relevant land but who fails to bring to the notice of the Minister his claim to the interest prior to such making shall, as from such making, cease to have any interest in the said land and in lieu thereof shall be entitled to obtain compensation from the Minister in respect of the loss of the interest; provided that the application to the Minister for the compensation is made, within—

(a) in case the person is a minor or a person of unsound mind, a period of six years from the date when such person ceases to be under such disability or dies whichever event first occurs, but not more than thirty years after such making,

(b) in any other case, a period of six years from the date of the purchase order.

F190[(8) (a) Compensation payable by the Minister pursuant to *subsection (7)* of this section shall, in default of agreement, be determined under and in accordance with the Lands Clauses Acts and, for the purposes of those Acts, the Minister shall be deemed to be the promoter of the undertaking and this section and the order under this section shall be deemed to be the special Act and, for the purposes of such determination, those Acts shall apply with any other necessary modifications and are incorporated (except in so far as they are inconsistent with and subject to any amendments or modification, express or implied, thereof effected by this Act) with this section.

(b) Sections 69 to 83 of the Lands Clauses Consolidation Act, 1845, shall apply to any compensation payable by virtue of this subsection, and for the purposes of such application the Minister shall be deemed to be the promoter of the undertaking.

(c) Where money is paid into court by the Minister under section 69, as applied by this subsection, of the Lands Clauses Consolidation Act, 1845, no costs shall be payable by the Minister to any person in respect of any proceedings for the investment, payment of income or payment of capital of such money.]

(9) Subject to *paragraphs (a)* and *(b)* of *subsection (7)* of this section, compensation under that subsection may be paid to the personal representative of a person entitled thereto.

(10) Where the Minister pays compensation under *subsection (7)* of this section pursuant to an application in that behalf, he may, if he thinks fit, require the person who agreed with him to sell an interest in land to which the application relates to pay to him—

(a) in case the amount of the compensation does not exceed the amount paid by the Minister to the person pursuant to *subsection (6)* of this section, an amount equal to the compensation,

(b) in case the compensation exceeds the amount so paid, the amount so paid,

and in case a person fails to pay to the Minister an amount duly required to be paid to him under this section, that amount shall be recoverable by the Minister as a simple contract debt in any court of competent jurisdiction.

(11) Where a purchase order is made in respect of land (in this subsection referred to as the transferred land) which immediately before the date of the order was subject in conjunction with other land to a State annuity, the following provisions shall apply:

(a) the Minister shall give notice of the making of the order to the authority to whom the State annuity is payable,

(b) the said authority shall, as soon as may be after the receipt of the notice, do one of the following things, namely—

(i) apportion, with effect as on and from the day immediately preceding the date of the purchase order, the State annuity in such manner as the authority considers proper between the transferred land and all or part of the other land, or

(ii) declare the whole of the State annuity to be exclusively charged, with effect as on and from the day immediately preceding the date of the purchase order, on either the transferred land or all or part of the other land.

(12) A purchase order shall have attached thereto a map or plan showing the land to which the order relates.

(13) No stamp duty shall be payable on any purchase order nor shall any fee be payable in respect of proceedings in the Land Registry under *subsection (5)* of this section.

Annotations

Amendments:

F189 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 14(a), S.I. No. 371 of 2001.

F190 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 14(b), S.I. No. 371 of 2001.

Modifications (not altering text):

C19 Functions under section transferred and references to “Minister for Finance” construed (2.03.1995) by *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 1995* (S.I. No. 61 of 1995), art. 4 and sch., subject to transitional provisions in arts. 5-9.

4.(1) There are hereby transferred to the Minister for Arts, Culture and the Gaeltacht the functions vested in the Minister for Finance by or under any enactment mentioned in the *Schedule* to this Order, immediately before the commencement of this Order.

(2) References to the Minister for Finance contained in any Act or Instrument thereunder and relating to any functions transferred by this Article shall, on and after the commencement of this Order, be construed as references to the Minister for Arts, Culture and the Gaeltacht.

...

SCHEDULE

...

Section 55 and subsections (1) to (4) of section 63 of the Wildlife Act, 1976 (No. 39 of 1976);

...

Editorial Notes:

E209 Previous affecting provision: functions under section transferred and references to “Minister for Energy” construed (17.12.1988) by *Wildlife (Transfer of Departmental Administration and Ministerial Functions) Order 1988* (S.I. No. 353 of 1988), art. 4, in effect as per art. 1(2), subject to transitional provisions in arts. 5-9; superseded as per C-note above.

Management etc. of certain land acquired, held or used by the Minister.

56.—F191[(1) All land acquired or vested in the Minister under the *Wildlife Acts, 1976 and 2000*, other than land which the Minister considers to be land to which this subsection and *subsection (2)* of this section should not apply and in relation to which a direction (which the Minister is hereby empowered to give) that those subsections shall not apply to the land is given by the Minister and is in force, shall stand held by the Minister for the purposes of the *Wildlife Acts, 1976 and 2000*, and may, as the Minister considers appropriate, at any time be managed and used for all or any of the following purposes, namely:

- (a) the conservation of wildlife;
- (b) the management and exploitation of hunting and fishing resources;
- (c) other purposes ancillary to any of the foregoing, including the growth of forest crops, the promotion of scientific knowledge, amenity, or recreational or educational purposes.]

(2) Where the Minister considers that land, being land acquired by or vested in the Minister in the manner mentioned in *subsection (1)* of this section, is not suitable for any purpose mentioned in that subsection, such land may be managed or used or otherwise dealt with by the Minister in such manner as he thinks fit, and in case land so acquired or vested is not immediately required for use for such a purpose, pending its use therefor the land may be used in such manner as the Minister thinks fit.

(3) The Minister may make such charges (if any) to the public as he considers appropriate for public access to, or use for car-parking or any other purpose of, any land managed or used by him for a purpose mentioned in *subsection (1)* of this section.

Annotations

Amendments:

F191 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 60, S.I. No. 371 of 2001.

State ownership of certain inland waters.

57.—(1) Where the Minister is of opinion that there is a doubt as to whether or not any lake or other inland waters belong to the State but, in his opinion, it is likely that the lake or other inland waters do so belong, he may, after consultation with the Minister for Agriculture and Fisheries, publish a notice in the *Iris Oifigiúil* and in at least one newspaper circulating in the locality in which the lake or other inland waters are situate requiring either, as may be stated in the notice—

- (a) any person who claims to have or to be entitled to enjoy an interest in or over the lake or other inland waters (which shall be specified in the notice) or, in the case of a lake, in or over the lakeshore accretion (if any) from the lake, or
- (b) any person who claims to have or to be entitled to enjoy an interest, other than a right of fishing, in or over the lake or other inland waters (which shall be so specified) or in or over such lakeshore accretion,

to furnish to the Minister within a period specified in the notice (being a period of not less than two months from the date of the publication in the *Iris Oifigiúil*) particulars of the interest together with an abstract (accompanied by copies of all abstracted documents) of his title to the interest or of the grounds on which the claim is based.

(2) Where a person furnishes to the Minister particulars required by a notice under *subsection (1)* of this section, the Minister shall pay to the person all costs necessarily and reasonably incurred by him in relation thereto.

(3) Where a notice is published under *subsection (1)* of this section, if in relation either to the whole of the inland waters and lakeshore accretion (if any) to which the notice relates or to a part of those waters or that lakeshore accretion (if any) either—

- (a) there is not furnished by any person within the period specified particulars of an interest duly supported by the abstract and copies of documents required by the notice, or
- (b) the period so specified has expired and the Minister acquires by agreement all interests particulars of which have been furnished to him pursuant to this section,

then, the Minister may by order declare that the fee simple—

- (i) in case the requirements of *paragraph (a)* or *paragraph (b)* of this subsection are complied with as regards the whole of the said inland waters and lakeshore accretion (if any), in the land covered by the waters to which the notice relates or, in the case of a lake, comprised in any lakeshore accretion from the lake to which the notice relates, belongs to the State,
- (ii) in case the said requirements are complied with only as regards a particular part of the said inland waters, or a particular part of any such lakeshore accretion, or a particular part of the said inland waters and lakeshore accretion, in the land covered by the said part of the said inland waters, or comprised in the said part of the said lakeshore accretion, or in such land and so comprised, as may be appropriate, belongs to the State,

together with any interest in or over the said land or waters which is inferior to the aforesaid fee simple; provided that in case the particulars required by the notice to be furnished to the Minister are particulars of interests other than rights of fishing, the terms of the declaration shall be framed so as not to include rights of fishing.

(4) A declaration made under this section shall operate as regards the land to which it relates in accordance with its terms and shall be conclusive evidence of the matters declared and shall not be questioned in any legal proceedings.

(5) Where the Minister makes a declaration under this section and a person subsequently proves that but for the making of the declaration he would have an interest (whether vested or contingent) in or over the land or lake or other inland waters to which the declaration relates, the person shall be entitled to be paid compensation by the Minister in respect of the interest.

(6) A claim under this section for payment of compensation shall, in default of agreement, be determined by arbitration under the Act of 1919 in like manner in all respects as if such claim arose in relation to compulsory acquisition of land.

(7) Nothing in this section shall restrict, prejudice or affect the functions of sanitary authorities or the Minister for Local Government under the Local Government (Sanitary Services) Acts, 1878 to 1964, or the Water Supplies Act, 1942.

Right to hunt on or over territorial seas of State vested in State.

58.—(1) It is hereby declared that the right to hunt fauna in or over the portion of the sea which is the territorial seas of the State belongs to the State.

(2) It shall not be lawful for a person without the permission of the Minister, to hunt fauna on, in or over any part of the portion of the sea mentioned in *subsection (1)* of this section.

F192[(3) Any person who contravenes *subsection (2)* of this section shall—

- (a) commit a trespass, and
- (b) be guilty of an offence.]

F193[(4) Nothing in *paragraph (a) of subsection (3)* of this section shall operate to prejudice any legal proceedings which may be instituted apart from that paragraph and a person who contravenes *subsection (2)* of this section may, if the Minister thinks fit, be sued by the Minister for trespass in any court of competent jurisdiction and for the purpose of giving jurisdiction under this Act the trespass shall be deemed to have been committed where the person complained against may be.]

Annotations

Amendments:

F192 Substituted (31.07.2001), by *Wildlife (Amendment) Act 2000* (38/2000), s. 61(a), S.I. No. 371 of 2001.

F193 Substituted (31.07.2001), by *Wildlife (Amendment) Act 2000* (38/2000), s. 61(b), S.I. No. 371 of 2001.

Regulations permitting and regulating public access to certain land.

59.—(1) Subject to *subsections (3), (4) and (7)* of this section, the Minister may make regulations permitting the public generally or any particular class or section of the public or the members of any body of persons which is of a particular class or description or the members of a particular body of persons, to have access to and use in accordance with the regulations—

(a) foreshore which is the property of the State,

(b) land (in this section subsequently referred to as a refuge) to which a designation order applies,

(c) any land (including land covered by inland waters) to which an establishment order applies and which is land owned by the State F194[*whether or not the Minister has a joint or several interest in such land*] (which land is so referred to as a State land nature reserve),

F195[(cc) *any other land held by the Minister for the purposes of the Wildlife Acts, 1976 and 2000,*]

(d) land other than foreshore mentioned in *paragraph (a)* of this subsection, which forms the seabed under part of the territorial seas of the State and to which an establishment order applies (which land is so referred to as a seabed nature reserve).

(2) Regulations under this section may apply to all foreshore which is the property of the State, every refuge, State land nature reserve and seabed nature reserve, or to any such foreshore or any refuge, State land nature reserve or seabed nature reserve which is of a particular class or description, or to particular such foreshore or a particular refuge, State land nature reserve or F196[*seabed nature reserve, or to all or any other land held by the Minister for the purposes of the Wildlife Acts, 1976 and 2000.*]

F197[(3) Regulations under this section which apply to foreshore shall regulate access to or use of such foreshore to such extent as the Minister considers necessary for the conservation of wildlife or of a wildlife habitat or of geological or geomorphological features, as the case may be, and such regulations shall be made by him only with the consent of the Minister for the Marine and Natural Resources and in addition to the foregoing, where the regulations relate to foreshore other than foreshore which is held by the Minister, they shall be made only after consultation with—

(a) in case such foreshore is held by the Commissioners, the Commissioners,

(b) in any other case, the Minister of the Government by whom the foreshore is held,]

(4) Regulations under this section which apply to a refuge shall regulate access to or use of the refuge to such extent as is necessary to enable the relevant designation order to have full effect.

(5) (a) Subject to *subsection (7)* of this section and *paragraph (b)* of this subsection, the Minister may by regulations permit and regulate access to and use by the public generally of land to which either a recognition order applies or an agreement under section 18 of this Act relates.

(b) Regulations shall be made by the Minister under this subsection only on the request and with the agreement of—

(i) in case the regulations relate to land to which a recognition order applies, the owner of such land,

(ii) in case the regulations relate to land to which an agreement under the said *section 18* relates, all the parties to the agreement (other than the Minister, where the Minister is such a party).

(6) Subject to *subsection (7)* of this section, the Minister may, at the request and with the agreement of a board established pursuant to *section 14* of this Act, by regulations permit and regulate the access to and use by the public generally of any land held by that board.

(7) Regulations made—

(a) under *subsection (5)* or *subsection (6)* of this section,

(b) under *subsection (1)* of this section which regulate access to foreshore or to a refuge (not being a refuge held by the Minister) to which, immediately before the commencement of this section, the public generally had access,

shall be made by the Minister only after consultation with any planning authority any part of whose area the relevant foreshore adjoins or within whose area the relevant land, or any part thereof, is situate.

(8) (a) Regulations under this section which have effect in relation to land held by the State shall, if the State ceases to hold the land to which they apply, thereupon cease to have effect in relation to the land.

(b) Regulations under this section which have effect in relation to land to which a designation order or a recognition order, as the case may be, for the time being applies shall, if the order is revoked, thereupon cease to have effect in relation to the land.

(c) Regulations made pursuant to *subsection (6)* of this section shall cease to have effect if and when the board at whose request they were made is dissolved or if it otherwise ceases to hold the land in respect of which the regulations were made.

(9) Where the Minister makes regulations under this section, he shall, as soon as may be after such making, cause a copy of the regulations to be sent to the Board and to any planning authority—

(a) in case the regulations affect foreshore, any part of whose area that foreshore adjoins,

(b) in any other case, within whose area the refuge or other land concerned, or any part thereof, is situate.

(10) Where the Minister decides to permit, whether by means of bye-laws, rules, regulations or otherwise, the public generally to have access, subject to specified conditions, for educational or leisure purposes to land held by the Minister, he shall, as soon as may be, give to the Board and to any planning authority in whose area the

land or any part thereof, is situate particulars of his decision and in case the Minister varies or revokes such a decision he shall likewise inform the Board and such planning authority of the variation or revocation.

(11) In case the Minister permits, subject to specified conditions and whether by means of bye-laws, rules, regulations or otherwise, access for educational or leisure purposes to land held by him, any person who fails to comply, whether by act or omission, with any such condition shall be guilty of an offence.

Annotations

Amendments:

F194 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 62(a)(i), S.I. No. 371 of 2001.

F195 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 62(a)(ii), S.I. No. 371 of 2001.

F196 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 62(b), S.I. No. 371 of 2001.

F197 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 62(c), S.I. No. 371 of 2001.

Editorial Notes:

E210 Power pursuant to section exercised (3.06.1981) by *Nature Reserve (Lough Hyne) Regulations 1981* (S.I. No. 207 of 1981).

Creation of rights of way. **60.—F198[...]**

Annotations

Amendments:

F198 Repealed (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 5(c), S.I. No. 371 of 2001.

Extinguishment of easements. **61.—F199[...]**

Annotations

Amendments:

F199 Repealed (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 5(c), S.I. No. 371 of 2001.

PART V

AMENDMENT OF ENACTMENTS

Amendment of section 3 of Firearms Act, 1925.

62.—Section 3 of the Firearms Act, 1925, is hereby amended by—

(a) the addition to subsection (1) of the following :

“but before granting the certificate the Superintendent shall require the person to state in writing whether or not, if the certificate is granted, he intends to use the firearm to which the application relates to kill exempted wild mammals within the meaning of the Wildlife Act, 1976, (other than hares) and in case the person indicates that he intends so to use the firearm, the certificate shall be granted only on the production by the applicant of a current licence granted to him by the Minister for Lands pursuant to section 29 (1) of that Act.”; and

(b) the addition to subsection (2) of—

“but before granting the certificate the Minister shall require the person applying for the certificate to state in writing whether or not, if the certificate is granted, he intends to use the firearm to which the application relates to kill exempted wild mammals within the meaning of the Wildlife Act, 1976, or protected wild birds within such meaning and to which an order under section 24 of that Act for the time being applies, and in case the person indicates that he so intends to use that firearm, the Minister shall grant the certificate only on production by the applicant of a current licence granted to him by the Minister for Lands pursuant to section 29 (2) of that Act.”.

Amendment of sections 9, 21, 22, 23 and 58 of Act of 1946.

63.—(1) F200[...]

(2) F200[...]

(3) F200[...]

(4) F200[...]

(5) Section 58 of the Act of 1946 is hereby amended as follows:

(a) subsection (1) shall have effect as if the words “rabbits or”, wherever they occur, were deleted, and

(b) the following is hereby substituted for subsection (3):

“(3) Each of the following shall be vermin for the purposes of this section—

(a) any wild bird which is not a protected wild bird within the meaning of the Wildlife Act, 1976,

(b) any wild animal (other than a bird) which is not a protected wild animal within the meaning of that Act.”

Annotations

Amendments:

F200 Repealed (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 5(c), S.I. No. 371 of 2001.

Editorial Notes:

E211 Previous affecting provision: functions under subss. (1)-(4) transferred and references to “Minister for Finance” construed (2.03.1995) by *Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 1995* (S.I. No. 61 of 1995), art. 4 and sch., subject to transitional provisions in arts. 5-9; subsections repealed as per F-note above.

E212 Previous affecting provision: functions under subss. (1)-(4) transferred and references to “Minister for Energy” construed (17.12.1988) by *Wildlife (Transfer of Departmental Administration and Ministerial Functions) Order 1988* (S.I. No. 353 of 1988), art. 4, in effect as per art. 1(2), subject to transitional provisions in arts. 5-9; superseded as per E-note above.

Amendment of First Schedule to State Property Act, 1954.

64.—The First Schedule to the State Property Act, 1954, is hereby amended by the substitution in paragraph 1 of “the Forestry Act, 1946, or under the Wildlife Act, 1976” for “the Forestry Act, 1946 (No. 13 of 1946)” and the said paragraph 1, as so amended, is set out in the following Table :

TABLE

1. Any land vested in the Minister for Lands by virtue of the Forestry (Redistribution of Public Services) Order, 1933 (S.R. & O., No. 158 of 1933), or acquired under the Forestry Acts, 1919 and 1928, or under the Forestry Act, 1946, or under the Wildlife Act, 1976.

Amendment of Firearms Act, 1964.

65.—(1) The Firearms Act, 1964, is hereby amended by—

(a) the substitution of “protected wild animals or protected wild birds within the meaning of the Wildlife Act, 1976,” for “game” both in section 3 (1) and section 12 (1),

(b) the addition to section 3 (2) of “, but an order under this subsection shall not extend for more than a month a period mentioned in subsection (1) of this section”, and

(c) the substitution both in subsection (3) and in subsection (4) (a) of section 3 of “such protected wild animals or wild birds” for “game”.

(2) Sections 3 (1), 3 (2), 3 (3), 3 (4) (a) and 12 (1) of the Firearms Act, 1964, as amended by subsection (1) of this section, are set out in paragraphs 1, 2, 3, 4 and 5, respectively, of the Table to this section.

TABLE

1.—(1) The Minister may, on its being represented to him by the Minister for Lands that it is necessary to do so in the interests of the preservation of protected wild animals or protected wild birds within the meaning of the Wildlife Act, 1976, make an order prohibiting the use or carriage of firearms or of firearms of such class or classes as may be specified in the order in a public place or on any lands either throughout the State or in such area or areas as may be specified in the order during such period, not exceeding one month, as may be specified in the order.

2.—(2) The Minister may by order, made after consultation with the Minister for Lands, amend or revoke an order under this section, including an order under this subsection, but an order under this subsection shall not extend for more than a month a period mentioned in subsection (1) of this section.

3.—(3) An order under this section shall not apply in relation to the use or carriage of firearms by members of the Defence Forces or the Garda Síochána

or to the use or carriage of a firearm by a person to whom the Superintendent of any district has granted a permit which is in force to use and carry a firearm for a purpose (other than the shooting of such protected wild animals or wild birds) specified in the permit in that district during a period specified in the permit, if the firearm is being used and carried in accordance with the terms of the permit.

4.—(4) (a) Whenever an order under subsection (1) of this section is in force in relation to any district, the Superintendent of that district may, in his absolute discretion, grant to any person a permit to use and carry in that district for a purpose (other than the shooting of such protected wild animals or wild birds) specified in the permit during a period specified in the permit a firearm to the use or carriage of which the order applies.

5.—(1) Where the firearm described in a firearm certificate is a shotgun, the certificate may be expressed, and in such case shall operate, to authorise the use of the gun only for killing animals or birds other than protected wild animals or protected wild birds within the meaning of the Wildlife Act, 1976, by the person to whom the certificate is granted either (as may be expressed in the certificate)—

(a) on land occupied by him, or

(b) on land occupied by another person.

Amendment of section 69 of Registration of Title Act, 1964.

66.—Section 69 of the Registration of Title Act, 1964, is hereby amended by the insertion in subsection (1) of the following paragraph after paragraph (r):

“(rr) an agreement under section 18 of the Wildlife Act, 1976, which provides that it shall be enforceable against persons deriving title to the relevant land under a party to the agreement;”.

Restriction of Part V of Protection of Animals (Amendment) Act, 1965.

67.—Part V of the Protection of Animals (Amendment) Act, 1965, shall be deemed to apply neither to protected wild birds nor to protected wild animals.

PART VI

MISCELLANEOUS

Inspection of land.

68.—F201[...]

Annotations

Amendments:

F201 Repealed (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 5(c), S.I. No. 371 of 2001.

Attempts etc. and miscellaneous other offences.

69.—(1) A person who attempts to commit an offence under this Act, or who aids, abets, counsels or procures the commission of an offence under this Act, or who solicits or incites any other person to commit an offence under this Act shall be guilty of an offence.

(2) Any person who, whether by act or omission, contravenes or fails to comply with regulations under this Act shall be guilty of an offence.

(3) (a) A person who refuses or who fails to give his correct name and address on a demand therefor being duly made pursuant to *section 72 or 73* of this Act shall be guilty of an offence.

(b) Any person who without reasonable excuse fails to comply with a requirement made by a member of the Garda Síochána or by an authorised person under *section 72 or 73* of this Act or who by act or omission impedes or obstructs such a member or person in the lawful exercise of a power conferred by this Act shall be guilty of an offence and if, in the case of a continuing offence, the impediment or obstruction is continued after conviction, he shall be guilty of a further offence.

F202[(c) Any person who assaults an authorised person in the exercise of any power conferred on him or her by this Act shall be guilty of an offence.]

(4) A person who, in purported compliance with any obligation to give information to which he is subject by virtue of this Act, gives any information which he knows to be false in a material particular or recklessly gives information which is so false shall be guilty of an offence.

(5) Any person who conceals from a person lawfully exercising a power under *section 72 or 73* of this Act F203[any specimen of flora, fauna, fossils or minerals] or any F203[part, product or derivative] of such specimen or any thing which is a thing mentioned in F204[*section 72(7) or 73(1)*] of this Act shall be guilty of an offence.

(6) Any person who contravenes a condition attached to a licence F205[or permission] granted by the Minister under this Act shall be guilty of an offence.

(7) Any person who, for the purpose of obtaining, whether for himself or another, the grant or renewal of a licence or permission under this Act—

(a) makes any statement or gives information which he knows to be false in a material particular or recklessly gives information which is so false, or

(b) produces or otherwise makes use of any book, record or other document which to his knowledge contains any statement or information which he knows to be false in a material particular,

shall be guilty of an offence.

F206[(7A) Where any person uses or allows or causes to be used a vessel, aircraft or mechanically propelled vehicle as an aid to the commission of an offence under the provisions of the *Wildlife Acts, 1976 and 2000*, or of any instrument made under those Acts, that person shall be guilty of an offence.]

F207[(7B) A statement or admission made by a person pursuant to a requirement to give information under *section 72 or 73* shall not be admissible as evidence in proceedings against the person for an offence (other than an offence under *subsection (3)*).]

Annotations

Amendments:

F202 Substituted (18.07.2018) by *Heritage Act 2018* (15/2018), s. 9(b)(i), commenced on enactment.

F203 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 63(b), S.I. No. 371 of 2001.

F204 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 63(c), S.I. No. 371 of 2001.

F205 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 63(d), S.I. No. 371 of 2001.

F206 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 63(e), S.I. No. 371 of 2001.

F207 Inserted (18.07.2018) by *Heritage Act 2018* (15/2018), s. 9(b)(ii), commenced on enactment.

Editorial Notes:

E213 Previous affecting provision: subs. (3)(c) inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 63(a), S.I. No. 371 of 2001; substituted as per F-note above.

Prosecution of offences.

70.—(1) Summary proceedings for any offence under this Act may be prosecuted by the Minister.

(2) Subject to *section 44 (4)* of this Act, summary proceedings for any offence under this Act may be prosecuted by a person who is neither the Minister nor a member of the Garda Síochána with the consent of the Minister or an officer of the Minister, F208[...], nominated by the Minister for the purpose.

(3) Notwithstanding *section 10 (4)* of the Petty Sessions (Ireland) Act, 1851, proceedings for any offence under this Act may be instituted at any time within one year after the date of the offence.

F209[(4) Nothing in this section shall prevent the prosecution under the Customs Acts for offences committed under the said Acts in respect of a contravention of *section 53A* of this Act.]

Annotations

Amendments:

F208 Deleted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 64(a), S.I. No. 371 of 2001.

F209 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 64(b), S.I. No. 371 of 2001.

Onus of proof.

71.—In any proceedings for an offence under this Act, it shall not be necessary to—

(a) negative by evidence the existence of any order under *section 24* or *25* of this Act or any licence or permission under this or any other Act,

(b) prove that any act which is the subject of the proceedings was not caused by or the result or effect of, or was not consequent upon any other thing lawfully done,

and the onus of proving such licence or permission or that such act was so caused or was such a result or effect or was so consequent upon shall be on, in the case of such a licence or permission, the person seeking to avail himself thereof, or in any other case, the person against whom the proceedings are instituted.

Powers of Garda Síochána and authorised persons.

72.—F210[(1) (a) The Minister may appoint in writing, and for such of the purposes of either or both this Act and the CITES Regulations as the Minister shall specify, a person to be an authorised person for the purposes so specified.

(b) In appointing a person to be an authorised person for specified purposes, the Minister may attach limitations to the exercise of functions by the authorised person by reference to all or any of the following, that is to say:

(i) the nature of the functions which such person may exercise or perform, and

- (ii) the time, place and circumstances in which such person may exercise or perform such functions.
- (c) Where a person has been appointed to be an authorised person under this subsection, the person shall hold office until—
 - (i) the appointment is terminated by the Minister, or
 - (ii) a written resignation signed by the person is received by the Minister.
- (d) The Minister may terminate the appointment of an authorised person appointed under *subsection (1)* of this section by giving one month's notice, in writing, to the person.

F211[(2) A member of the Garda Síochána or an authorised person who has reasonable grounds for suspecting that a person has committed an offence under the *Wildlife Acts 1976 to 2018* may, at all reasonable times—

- (a) stop and search the person,
- (b) require the person to give his or her name and address and, if requested, to verify the information given,
- (c) require the person to give such information and assistance as the member or authorised person, as the case may be, considers necessary for the purposes of exercising his or her functions under the *Wildlife Acts 1976 to 2018*, and
- (d) require the person to declare whether he or she has in his or her possession and, if such member or authorised person, as the case may be, considers it necessary, to produce on demand for examination—
 - (i) any specimen of fauna, flora, fossils or minerals or any part, product or derivative of any such specimen,
 - (ii) any licence or permission granted by the Minister under the *Wildlife Acts 1976 to 2018* (including any certificate deemed, pursuant to *subsection (5)* or *(5A)* of *section 29*, to be a licence so granted),
 - (iii) in the case of a person who is resident in a Member State (other than the State), a European Firearms Pass within the meaning of Article 1(4) of Council Directive No. 91/477/EEC of 18 June 1991¹ issued to him or her by the competent authority of that Member State, or any other permit, licence, authorisation or other document to hold a firearm duly issued by a competent authority of such a Member State,
 - (iv) any permit or certificate issued for the purposes of the CITES Regulations together with any supporting documents in the person's possession and any permit or certificate to which Article 11 of Council Regulation (EC) No. 338/97 of 9 December 1996² relates, or
 - (v) any thing which is mentioned in *subsection (7)* which is in the person's possession,

and such member or authorised person may seize and retain any specimen or part, product or derivative of a specimen or any thing so produced which appears to him or her to be something which might be required as evidence in proceedings for an offence under the *Wildlife Acts 1976 to 2018*.]]

F211[(2A) A member of the Garda Síochána or an authorised person may, if such member or authorised person has reasonable grounds for suspecting from the activity of any person (in this subsection referred to as the 'suspected person') that an offence under any provision of the *Wildlife Acts 1976 to 2018* is being, or has been, committed,

¹ OJ No. L256, 13.9.1991, p.51

² OJ No. L61, 3.3.1997, p.1

in the presence of such member or person, by the suspected person and that person has, or had at the time of being so suspected, in his or her possession, or under his or her control, any thing which is mentioned in *subsection (7)* or any other thing capable of being used to commit an offence, then such member or authorised person may, without prejudice to any other function exercisable by such member or person—

(a) require the suspected person—

(i) to desist from continuing or recommencing that activity,

(ii) to give to the member or authorised person, as the case may be, his or her name and address and, if requested, to verify the information given, and

(iii) to give to the member or authorised person, as the case may be, such information and assistance as the member or authorised person considers necessary for the purposes of exercising his or her functions under the *Wildlife Acts 1976 to 2018*,

and

(b) arrest without warrant or cause any other person acting under direction of such member or authorised person to arrest without warrant or to assist in arresting the suspected person if that person—

(i) continues or recommences that activity,

(ii) fails to give his or her name or address or any information or assistance requested or required, or

(iii) gives a name or address or information which the member or authorised person has reasonable grounds to suspect is false or misleading,

and where the suspected person has been so arrested by an authorised person, the authorised person shall, as soon as is practicable in the circumstances, deliver the suspected person into the custody of a member of the Garda Síochána to be dealt with according to law.]

F211[(3) A member of the Garda Síochána or an authorised person may, if he or she has reasonable grounds for suspecting that a person is committing or has committed an offence under any provision of the *Wildlife Acts 1976 to 2018*, at all reasonable times enter any land (other than a dwelling save with the consent of its occupier) to which the suspicion relates and may also, whether on that land or otherwise—

(a) search any vehicle, vessel or aircraft or any mechanically-propelled vehicle (within the meaning of the Road Traffic Act 1961) used or suspected of being used to transport, export or import any specimen of fauna, flora, fossils or minerals or any part, product or derivative of any such specimen contrary to any provision of the *Wildlife Acts 1976 to 2018*, and such member or authorised person, for the purpose of carrying out the search, may, if he or she thinks fit, require the person who for the time being is in control of the vehicle, vessel or aircraft or mechanically propelled vehicle to bring it to a stop or refrain from moving it,

(b) open and examine any package, parcel, box or other container which he or she reasonably suspects is being so used,

(c) require the person who is for the time being in control of a vehicle, vessel, aircraft or any mechanically propelled vehicle mentioned in paragraph (a) or any other person found thereon or therein to—

(i) give his or her name and address,

- (ii) give such information and assistance as the member or authorised person, as the case may be, considers necessary for the purposes of exercising his or her functions under this Act, and
 - (iii) produce for examination any book, record or other document which relates to any specimen of fauna or flora and which is in the person's possession or under his or her control and, if known to the person, the name and address of the owner of any specimen of fauna or flora or any part or product of fauna or flora found in the course of the search,
- (d) inspect and, if he or she thinks fit, take copies of any entry in any book, record or other document produced pursuant to a requirement made under this subsection,
- (e) if—
- (i) such member or authorised person has reasonable grounds for suspecting that any offence has been or is being committed under the *Wildlife Acts 1976 to 2018* with or in relation to anything found in the course of the search,
 - (ii) he or she reasonably suspects that any vehicle, vessel, aircraft or mechanically propelled vehicle has been or is being used in committing an offence under the *Wildlife Acts 1976 to 2018* and it appears to him or her that it might be required in evidence in proceedings for an offence under those Acts, or
 - (iii) a document so found is a record or other document which the member or person has reason to believe might be required as evidence in proceedings for an offence under the *Wildlife Acts 1976 to 2018*,
- the member or authorised person may seize and detain it and anything else so found which appears to him or her to be something which might be required as evidence in proceedings for an offence under the *Wildlife Acts 1976 to 2018*, and
- (f) require, if considered necessary in order to determine the identity or ancestry of any specimen of fauna, the taking from that specimen of a sample of blood or tissue but only if—
- (i) the sample is taken by a veterinary practitioner registered under Part 4 of the Veterinary Practice Act 2005, and
 - (ii) in the opinion of the veterinary practitioner the taking of such a sample will not cause lasting harm to the specimen.]
- (4) (a) A member of the Garda Síochána or an authorised person may at any time for the purpose of exercising the powers conferred on him by *subsection (2)* and *paragraph (a)* of *subsection (3)* of this section enter on any land.
- (b) *Paragraph (a)* of this subsection shall not be construed as enabling a member of the Garda Síochána or an authorised person to enter F212[any dwelling].
- (5) Every person authorised by the Minister under *subsection (1)* of this section shall be furnished with a certificate of his authorisation and when exercising a power under this Act shall, if requested by any person thereby affected, produce such certificate for inspection by the person.
- (6) Nothing in this section shall operate to prejudice any power to search or to seize or detain property which may be exercised by a member of the Garda Síochána apart from this section.
- F213[(7) The things referred to in *subsections (2)* and *(2A)* of this section are—

- (a) a dog or a bird or other animal suspected of being capable of use—
 - (i) to hunt, pen, retrieve or otherwise be involved in the capture of fauna, or
 - (ii) to find or assist in the finding of flora,
- (b) a firearm, trap, snare, net, line, hook, arrow, dart or spear, or a similar device, instrument or missile calculated or likely to cause death or bodily injury to or causes to be captured alive, any wild bird or wild animal coming in contact with it,
- (c) birdlime or any substance of a like nature,
- (d) poisonous, poisoned or stupefying bait, tracer shot or a gun or explosive mentioned in *section 33(2)* of this Act, or any containers of gas or smoke or chemical wetting agents mentioned in *section 34(1)* of this Act,
- (e) a decoy or electrical or other instrument, device or appliance mentioned in *section 35(1)* or *38* of this Act, and
- (f) any type of material or form of equipment used for geological or geomorphological purposes.]

Annotations

Amendments:

F210 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 65(a), S.I. No. 371 of 2001.

F211 Substituted (18.07.2018) by *Heritage Act 2018* (15/2018), s. 9(c)(i), commenced on enactment.

F212 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 65(c), S.I. No. 371 of 2001.

F213 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 65(d), S.I. No. 371 of 2001.

Editorial Notes:

E214 Previous affecting provision: subs. (2) amended (10.07.2010) by *Wildlife (Amendment) Act 2010* (19/2010), s. 6, commenced on enactment.

E215 Previous affecting provision: subs. (2) substituted, (2A) inserted and (3) amended (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 65(a), (b), S.I. No. 371 of 2001; substituted as per F-note above.

Search warrants. **73.**—F214[(1) If a Judge of the District Court is satisfied by information on oath of an authorised person or a member of the Garda Síochána that there are reasonable grounds for suspecting that a person is in possession on any premises or other land of any specimen of fauna, flora, fossils or minerals or any part, product or derivative of any such specimen or anything mentioned in *section 72(7)* of this Act or anything liable or believed to be liable to forfeiture under this Act and that as regards the specimen, part, product, derivative or thing an offence under this Act has been or is being committed, the Judge may issue a search warrant under this section.]

(2) Subject to *subsection (3)* of this section, a warrant issued under this section shall be expressed and shall operate to authorise—

- (a) in case the relevant information is sworn by a member of the Garda Síochána, a member of the Garda Síochána named in the warrant, accompanied by such

other members of the Garda Síochána or such authorised persons as may be reasonably necessary,

- (b) in case the relevant information is sworn by an authorised person, an authorised person named in the warrant, accompanied by such other persons as may be reasonably necessary,

at any reasonable time or times within seven days of the issue of the warrant to—

- (i) enter and search, if need be by force, the premises or other land named in the warrant,

- (ii) require any person found on such premises or other land to furnish to him his name and address,

F215[(iia) require a person referred to in *paragraph (ii)* to give such information and assistance as he or she considers necessary for the purposes of exercising his or her functions under the *Wildlife Acts 1976 to 2018*,]

- (iii) require a person who is in occupation or is in control or is concerned in the management of the premises or other land to furnish to him his name and address and to produce,

(A) any thing mentioned in *subsection (1)* of this section,

(B) any books, records or other documents which relate to any thing so mentioned and which are in any such person's possession or under his control,

and if known to such person, to furnish to him the name and address of the owner of any thing so produced,

- (iv) inspect and, if he thinks fit, take copies of any entry in any book, record or other document produced in pursuance of a requirement made pursuant to the warrant,

and if the member or authorised person so named has reasonable grounds for suspecting that either,

(A) an offence has been or is being committed under this Act with or in relation to anything found in the course of the search, or

(B) a document so found is a record or other document which the member or authorised person has reason to believe may be required as evidence in proceedings for an offence under this Act,

the member or authorised person may seize and detain that thing or document and anything else so found which appears to him to be something which might be required as evidence in proceedings for an offence under this Act.

(3) The powers conferred on an authorised person by a warrant issued under this section shall be exercisable by the person as regards a dwelling only if, and only for so long as, he is accompanied by a member of the Garda Síochána.

Annotations

Amendments:

F214 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 67, S.I. No. 371 of 2001.

F215 Inserted (18.07.2018) by *Heritage Act 2018* (15/2018), s. 9(d), commenced on enactment.

F216[Penalties.

74. (1) Where a person commits an offence under the *Wildlife Acts 1976 to 2018*, not being an offence mentioned in *subsection (2), (3) or (4)*, such person is liable on summary conviction to a class A fine.

(2) Where a person commits an offence under *section 28, 33, 34 or 38* (not being an offence to which *subsection (3)* applies) such person is liable—

(a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months or to both, or

(b) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) Where a person commits an offence under *Part II* (other than under *section 28, 33, 34 or 38*) or under *section 45, 47, 51, 52, 53A or 58(3)(b)* in relation to—

(a) any specimen of a species of fauna specified in the Fourth Schedule,

(b) any specimen of a species listed in annexes to the CITES Regulations, or

(c) any specimen of a species of flora or fauna which is of a species for the time being declared by regulations under this section to be a species to which this subsection relates,

such person is liable—

(i) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months or to both, or

(ii) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 2 years or to both.

(4) Where a person commits an offence under *section 19(9), 21(4)(a) or 36(11)* of the *Wildlife (Amendment) Act 2000*, such person is liable—

(a) on summary conviction, to a class A fine, or

(b) on conviction on indictment, to a fine not exceeding €100,000.

(5) Where a person commits an offence under *section 69(3)(c)* such person is liable—

(a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months or to both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years or to both.

(6) Where the Minister is satisfied that a particular species of fauna or flora is in danger of extinction or requires special protection because of a threat to its existence throughout the State or in any specified area of the State, the Minister may by regulations declare—

(a) the species, or

(b) the species in any specified area,

to be one to which *subsection (3)* relates.]

Annotations**Amendments:**

F216 Substituted (18.07.2018) by *Heritage Act 2018 (15/2018)*, s. 10(1), commenced on enactment.

Editorial Notes:

E216 Previous affecting provision: section amended (10.07.2010) by *Wildlife (Amendment) Act 2010* (19/2010), s. 7(a)(i), commenced on enactment; section substituted as per F-note above.

E217 Previous affecting provision: section amended (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 68(d), S.I. No. 371 of 2001; section substituted as per F-note above.

F217[Fixed
payment notice

74A. (1) Where a member of the Garda Síochána or an authorised person has reasonable grounds for believing that a person is committing or has committed an offence under the *Wildlife Acts 1976 to 2018* (referred to in *section 74(1)*) and declared to be a fixed payment offence, he or she may serve the person with a notice, in the prescribed form stating that—

- (a) the person is alleged to have committed the offence specified in the notice,
- (b) the person may, during the period of 21 days beginning on the date of the notice, make to the Minister, at the address specified in the notice a payment of the prescribed amount (being not more than €500) accompanied by the notice, duly completed, and
- (c) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if a payment specified in the notice, accompanied by the notice, duly completed, is made during that period, no prosecution in respect of that alleged offence will be instituted.

(2) Where notice is given under *subsection (1)*—

- (a) a person to whom the notice applies may, during the period specified in the notice, make to the Minister at the address specified in the notice, the payment specified in the notice, accompanied by the notice, duly completed,
- (b) the Minister may receive the payment, issue a receipt for it and retain the money paid, and any payment received shall not be recoverable in any circumstances by the person who made it, and
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment specified in the notice is made, accompanied by the notice, duly completed, during that period, no prosecution in respect of the alleged offence shall be instituted.

(3) The Minister may by order declare offences, referred to in *section 74(1)*, under the *Wildlife Acts 1976 to 2018* to be fixed payment offences for the purposes of this section.

(4) The Minister may make regulations prescribing any matter or thing which is referred to in this section as prescribed or to be prescribed and in prescribing the amount to accompany the payment of a notice under this section may prescribe different amounts in relation to different fixed payment offences.

(5) In a prosecution for an offence referred to in *subsection (1)* the onus of proving that a payment pursuant to a notice under this section has been made lies on the defendant.]

Annotations**Amendments:**

F217 Substituted (18.07.2018) by *Heritage Act 2018* (15/2018), s. 10(1), commenced on enactment.

Power of court to revoke certain certificates and licences and to impose certain disqualifications.

75.—(1) Where a person who holds—

(a) a firearm certificate which by virtue of F218[*subsection (5) or (5A) of section 29*] of this Act is deemed to be a licence granted under that section, or

(b) a firearm certificate granted on the production of a current licence granted by the Minister to the person under *section 29* of this Act,

is convicted of an offence under *Part II* of this Act, the court by which the person is convicted may revoke the certificate mentioned in *paragraph (a)* of this subsection or the licence mentioned in *paragraph (b)* of this subsection, as may be appropriate, and disqualify the person from holding such a certificate or licence and such revocation and disqualification shall be for such period as the court thinks appropriate and shall be in addition to any other punishment imposed by the court in respect of the offence.

(2) Where pursuant to *subsection (1)* of this section a court revokes a firearm certificate mentioned in *paragraph (a)* of that subsection, section 6 of the Firearms Act, 1925 (inserted by section 8 of the Firearms Act, 1964), shall apply as if the certificate had been revoked under section 5 of that Act; provided that in case the firearm described in such certificate is a shotgun, the Superintendent of the Garda Síochána of the district in which the holder of the certificate resides may, within three months of the revocation, if he thinks fit, grant under section 12 of the Firearms Act, 1964, to such holder in respect of such shotgun a limited certificate within the meaning of the said section 12.

(3) Where a court revokes a certificate or licence and imposes a disqualification pursuant to this section, the registrar or clerk of the court shall, as soon as may be, send to the Minister a copy of the court's order.

Annotations

Amendments:

F218 Substituted (10.07.2010) by *Wildlife (Amendment) Act 2010* (19/2010), s. 8, commenced on enactment.

Forfeiture.

76.—F219[(1) (a) Where any specimen of fauna, flora, fossils or minerals or any part, product or derivative of such a specimen or any firearm, trap, snare, net or any mechanically-propelled vehicle or any vessel or aircraft or other thing has come into the possession of a member of the Garda Síochána or an authorised person in respect of which, or with which, or by means of which, an offence is with reasonable cause suspected by the member or authorised person of having been committed under the *Wildlife Acts, 1976 and 2000*, or where an offence has been committed or is alleged to have been committed under those Acts, and on the application before a court of—

(i) the Minister, or

(ii) where criminal proceedings have been instituted, the person who instituted those proceedings,

then, subject to *subsections (2), (3) and (4)* of this section, the appropriate court may, at its discretion and where it is satisfied that an offence has been committed (whether or not any person has been convicted of the offence) order the forfeiture of the thing concerned.

(b) In this subsection—

'appropriate court' means—

- (i) in case the estimated value of the thing to be forfeited does not exceed F220[€15,000], the District Court,
 - (ii) in case the estimated value of the thing to be forfeited does not exceed F221[€75,000], the Circuit Court,
 - (iii) in any case, the High Court;
- 'estimated value', in relation to the thing sought to be forfeited, means the estimated amount of money which, in the opinion of the court, a willing purchaser would pay to a willing seller when such a thing could be sold legally and after deduction for—
- (i) the estimated costs incidental to such a sale, and
 - (ii) the estimated amount of any tax or duty owing to the State in respect of that thing,
- and when it cannot be sold legally then such estimated value, if any, as the court considers appropriate.
- (c) (i) If, in relation to an application under this section to the District Court, that court becomes of opinion during the hearing of the application that—
- (I) the estimated value of the thing to be forfeited exceeds F220[€15,000], or
 - (II) that for any reason it should decline jurisdiction,
- it may, if it so thinks fit, transfer the application to the Circuit Court or the High Court, whichever it considers appropriate having regard to the estimated value aforesaid or to such other matters that it considers appropriate.
- (ii) If, in relation to an application under this section to the Circuit Court, that court becomes of opinion during the hearing of the application that—
- (I) the estimated value of the thing to be forfeited exceeds F221[€75,000], or
 - (II) that for any reason it should decline jurisdiction,
- it may, if it so thinks fit, by order transfer the application to the High Court.
- (d) An application under this section shall be brought in a summary manner.
- (e) (i) An order shall not be made by a court under this section unless the court is satisfied that in the circumstances all practicable steps have been taken to notify any person of the proceedings relating to the application for the order and who, in the opinion of the court, should be given the opportunity of being heard by it on that application.
- (ii) The court concerned may make such order as to the costs of the parties to, or heard by the court in, the proceedings relating to an application for an order under this section as it considers appropriate.]

(2) A court shall not order anything to be forfeited under this section if a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

(3) Where a court makes an order under this section in relation to a firearm and the person convicted of the offence under this Act which caused the order to be made

is the owner of the firearm, the firearm shall be disposed of, either by sale or otherwise, in such manner as the Commissioner of the Garda Síochána authorises.

F222[(4) Where an order is made under this section in relation to a thing other than a firearm to which subsection (3) of this section applies, such thing shall, as the court shall direct, either be returned to the person appearing to the court to be the owner or sold or disposed of in such other manner as the court thinks fit.]

(5) Where a firearm F223[or mechanically-propelled vehicle or vessel or aircraft] or other thing is sold pursuant to this section, the net proceeds of the sale shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance shall direct.

Annotations

Amendments:

F219 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 69(a), S.I. No. 371 of 2001.

F220 Substituted (3.02.2014) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 15 and sch. part 2 item 4, S.I. No. 566 of 2013.

F221 Substituted (3.02.2014) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 14 and sch. part 1 item 1, S.I. No. 566 of 2013.

F222 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 69(b), S.I. No. 371 of 2001.

F223 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 69(c), S.I. No. 371 of 2001.

Modifications (not altering text):

C20 Functions under subs. (5) transferred and references to “Minister for Finance” construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 3, 5 and sch. 1 part 2, in effect as per art. 1(2), subject to transitional provisions in arts. 6-9.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

(b) the statutory instruments specified in Schedule 2,

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

Number and Year	Short Title	Provision
(1)	(2)	(3)
...

Number and Year (1)	Short Title (2)	Provision (3)
No. 39 of 1976	Wildlife Act 1976	Sections 5, 8, 9 and 76(5); Second Schedule, paragraphs 11 and 12
...

Editorial Notes:

E218 Previous affecting provision: subs. (1)(b) and (c) amended by *Courts and Court Officers Act 2002* (15/2002), ss. 13 and 14 and sch. 2, not commenced; repealed (3.02.2014) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 2(1), S.I. No. 566 of 2013.

Appeal against seizures.

77.—Any person who is aggrieved by a seizure and detention under this Act F224[, including any seizure or detention to which the CITES Regulations relate] may appeal to a F225[Judge] of the District Court and in determining the appeal the F225[Judge] may—

(a) if he is satisfied that the document or other thing was properly seized, confirm the seizure and detention, and

(b) if he is not so satisfied, order the person who made the seizure to return to the person the document or other thing seized and order the Minister to pay to the person such compensation (if any), costs (if any) and expenses (if any) as he considers reasonable having regard to any loss, costs and expenses incurred by the person by reason of the seizure and detention.

Annotations**Amendments:**

F224 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 70, S.I. No. 371 of 2001.

F225 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000* (38/2000), s. 70, S.I. No. 371 of 2001.

Disposal of things seized.

78.—(1) A person who, in accordance with this Act, has seized any document or other thing shall not dispose of it—

(a) without the consent in writing of the owner or the person in apparent charge or control of it, or

(b) in the case of any thing other than a document, unless a direction is given pursuant to this section by F226[a Judge of the District Court] for its disposal.

F227[(2) A person who under this Act has seized any thing may, subject to such person giving notice in writing to—

(a) the owner, or

(b) the person who, when the seizure was made, was in apparent charge or control of it,

where such owner or person is known to the person who so seized that thing or whose identity and the address at which such owner or person resides can be ascertained by reasonable inquiries of the intention to do so, apply to a Judge of the District Court for a direction that the thing be disposed of (by destruction or otherwise) in a manner specified in the direction.]

(3) F228[A Judge of the District Court] to whom an application in that behalf is duly made under this section shall, if he is satisfied that any thing in respect of which the application is made is likely, before it can be used as evidence in proceedings for an offence under this Act, to become unfit for human consumption, or if he is satisfied for any other reason that the thing ought not to be further detained, give a direction under this section authorising its disposal (by destruction or otherwise).

F229[(3A) Where any thing has been seized under this Act is, in the opinion of any person entitled to seize it, of a perishable nature, then the thing seized may be sold or otherwise destroyed as appropriate and where it is sold the person causing it to be sold shall out of the proceeds of such sale defray all expenses incurred in the seizure, removal, storage and sale of it and, except where a court has otherwise decided in relation to the thing so sold or court proceedings relating to the thing so sold have been instituted but not concluded, shall pay the surplus of such proceeds to the person who at the time of the seizure was the owner of it.]

(4) Where a direction is given under this section, the person who applied for the direction shall, as soon as may be, give notice of the making of the direction to the person to whom notice was given pursuant to *subsection (2)* of this section.

(5) F230[...]

(6) F230[...]

(7) F230[...]

(8) Moneys payable pursuant to a disposal under this section shall be paid to the Minister.

Annotations

Amendments:

F226 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 71(a), S.I. No. 371 of 2001.

F227 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 71(b), S.I. No. 371 of 2001.

F228 Substituted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 71(c), S.I. No. 371 of 2001.

F229 Inserted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 71(d), S.I. No. 371 of 2001.

F230 Deleted (31.07.2001) by *Wildlife (Amendment) Act 2000 (38/2000)*, s. 71(e), S.I. No. 371 of 2001.

Editorial Notes:

E219 Power pursuant to subs. (7) exercised (30.06.1977) by *Wildlife Act, 1976 (Certificate of Peace Commissioner) Regulations 1977* (S.I. No. 210 of 1977).

Section 10.

FIRST SCHEDULE

ENACTMENTS REPEALED

Session and Chapter or Number and Year	Short Title	Extent of Repeal
10 Will. 3, c. 8	Deer Protection Act, 1698.	The whole Act.
27 Geo. 3, c. 35	Game Act, 1787.	The whole Act.
7 Geo. 4, c. 9	Night Poaching Act, 1826.	The whole Act.
25 & 26 Vict., c. 114	Poaching Prevention Act, 1862.	The whole Act.
No. 11 of 1930	Game Preservation Act, 1930.	The whole Act.
No. 16 of 1930	Wild Birds Protection Act, 1930.	The whole Act.
No. 13 of 1946	Forestry Act, 1946.	Section 61.
No. 10 of 1965	Protection of Animals (Amendment) Act, 1965.	Section 8.

Section 14.

SECOND SCHEDULE

PROVISIONS WHICH MAY BE INCLUDED IN AN ORDER UNDER SECTION 14

1. The Board shall be a body corporate with perpetual succession and power to sue and be sued in its corporate name and to acquire, hold and dispose of land.

2. The Board shall consist of a chairman and not less than a prescribed number of ordinary members.

3. (1) Where the chairman or an ordinary member of the Board is nominated as a candidate for election to either House of the Oireachtas or as a member of Seanad Éireann, he shall thereupon cease to be a member of the Board.

(2) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein shall be disqualified from being a member of the Board.

4. The chairman and each ordinary member of the Board shall be appointed by the Minister and the Minister when making the appointment shall fix his term of office and, subject to such other provisions of this Schedule as may be relevant, he shall hold his office on such terms and conditions as the Minister, with the consent of the Minister for the Public Service, determines.

5. A member of the Board may at any time resign his office by letter addressed to the Minister and the resignation shall take effect as on and from the date of the receipt of the letter by the Minister.

6. The Minister may remove from office a member of the Board who has become incapable through ill-health of efficiently performing his duties or whose removal appears to the Minister to be necessary for the effective performance by the Board of its functions.

7. A member of the Board (other than the chairman) may be appointed by the Minister from among his serving officers.

8. A member of the Board shall be paid by the Board such remuneration (if any) and allowances for expenses as the Minister, with the consent of the Minister for the Public Service, determines.

9. A member of the Board whose term of office expires by the effluxion of time shall be eligible for reappointment.

10. Where a casual vacancy occurs among the members of the Board, the Minister shall appoint a person to fill the vacancy as soon as possible.

11. (1) The Board shall keep in such form as may be approved by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of all moneys received or expended by it.

(2) The Board shall keep a profit and loss account and a balance sheet.

(3) The Board shall keep such special accounts (if any) as the Minister, with the consent of the Minister for Finance, may from time to time direct.

(4) All accounts kept pursuant to this Article shall be submitted by the Board to the Comptroller and Auditor General for audit.

(5) Immediately after their audit, a copy of the accounts (including any special accounts) kept by the Board pursuant to this Article, a copy of the balance sheet (if any) and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas.

12. There may, subject to such conditions, if any, as the Minister thinks proper, be paid to the Board in each financial year out of moneys provided by the Oireachtas a grant or grants of such amount or amounts as the Minister, with the consent of the Minister for Finance and after consultation with the Board in relation to its programme of expenditure for that year, may fix.

13. (1) The Minister, with the consent of the Minister for the Public Service, may appoint such officers and servants as are in his opinion necessary to assist the Board in the performance of its functions.

(2) The officers and servants so appointed shall hold office on such terms and receive such remuneration as the Minister for the Public Service determines.

14. (1) The Board shall hold such and so many meetings as may be necessary for the performance of its functions.

(2) The Minister may fix the date, time and place of the first meeting of the Board.

15. The quorum for a meeting of the Board shall be such as is specified in an order made under section 14 of this Act and which relates to the Board and is for the time being in force.

16. Each member of the Board at a meeting thereof shall have a vote.

17. Every question at a meeting of the Board shall be determined by a majority of votes of the members present and, in the event that voting is equally divided, the chairman shall have a casting vote.

18. Subject to having a quorum, the Board may act notwithstanding a vacancy among its members.

19. Subject to the provisions of any order made under section 14 of this Act and which relates to the Board, the Board may provide for any matters of procedure.

20. The Board shall, as soon as may be after its establishment, provide itself with a seal.

21. The Board may perform any of its functions through or by any of its officers duly authorised by the Board in that behalf.

22. The seal of the Board shall be authenticated by the signature of two members of the Board or by the signature of a member of the Board and of an officer or servant of the Board authorised by the Board to act in that behalf.

23. Judicial notice shall be taken of the seal of the Board and every document purporting to be an instrument made by the Board and to be sealed with the seal (purporting to be authenticated in accordance with Article 22 of this Schedule) of the Board shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

24. (1) The Minister may, with the approval of the Minister for the Public Service, make and carry out according to its terms a scheme for the granting of pensions, gratuities or other allowances to or in respect of the chairman and ordinary members of the Board appointed in a wholetime capacity ceasing to hold office, other than persons in respect of whom an award under the Superannuation Acts, 1834 to 1963, may be made.

(2) A scheme under this Article may provide that the termination of the appointment of the chairman or of an ordinary member of the Board during that person's term of office shall not preclude the award to him under the scheme of a pension, gratuity or other allowance.

(3) The Minister may, with the approval of the Minister for the Public Service, amend a scheme made by him under this Article.

(4) If any dispute arises as to the claim of any person to, or the amount of, any pension, gratuity or allowance payable in pursuance of a scheme under this Article, such dispute shall be submitted to the Minister who shall refer it to the Minister for the Public Service, whose decision thereon shall be final.

(5) Every scheme made by the Minister under this Article shall be laid before each House of the Oireachtas as soon as may be after it is made and if either House, within the next twenty-one days on which that House has sat after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(6) Where an established civil servant is definitively transferred to the Board as a member thereof, the superannuation benefits to be granted to him shall, if the Minister for the Public Service in his discretion so directs, be calculated in accordance with the provisions of the Superannuation Acts, 1834 to 1963, as if, during the period of his service as a wholetime member of the Board subsequent to his transfer, he had been an established civil servant and had been paid during that period out of moneys provided by the Oireachtas within the meaning of section 17 of the Superannuation Act, 1859.

25. (1) The Board may accept gifts of money, land or other property upon such terms and conditions (if any) as may be specified by the donor.

(2) The Board shall not accept a gift if the conditions attached by the donor to the acceptance are inconsistent with the functions of the Board.

(3) Any funds of the Board, being a gift or the proceeds of a gift to it, may, subject to any terms or conditions of the gift, be invested by the Board in any manner in which a trustee is empowered by law to invest trust funds.

Annotations

C21 Functions transferred and references to “Minister for Finance” construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 3, 5 and sch. 1 part 2, in effect as per art. 1(2), subject to transitional provisions in arts. 6-9.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

(b) the statutory instruments specified in Schedule 2,

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

Number and Year (1)	Short Title (2)	Provision (3)
...
No. 39 of 1976	Wildlife Act 1976	Sections 5, 8, 9 and 76(5); Second Schedule, paragraphs 11 and 12
...

Sections 19, 22,
31 and 35.

THIRD SCHEDULE

SPECIES OF WILD BIRDS EXCLUDED (SUBJECT TO SECTION 22 (2)) FROM SECTIONS 19
AND 22

Bullfinch

F231[...]

F231[...]

F231[...]

F231[...]

F231[...]

F231[...]

F231[...]

F231[...]

F231[...]

F231[...]

F231[...]

F231[...]

Annotations

Amendments:

F231 Deleted (6.12.1985) by *European Communities (Wildlife Act, 1976) (Amendment) Regulations 1985* (S.I. No. 397 of 1985), reg. 3(f), in effect as per reg. 1(2).

Sections 22 and
23.

Fourth Schedule

FAUNA REFERRED TO IN SECTION 22 (6) OR 23 (8)

PART I

SPECIES OF PROTECTED WILD BIRDS REFERRED TO IN SECTION 22 (6)

Buzzards

Eagles

Falcons

Harriers

Hawks

Kites

Osprey

Owls

PART II

SPECIES OF PROTECTED WILD ANIMALS REFERRED TO IN SECTION 23 (8)

Pine Marten

Red Deer

Seals

Whales

Section 23.

FIFTH SCHEDULE

ANIMALS REFERRED TO IN SECTION 23

LAND MAMMALS

Badger
Bat species
Deer species
Hare species
Hedgehog
Otter
Pine Marten
Red Squirrel

MARINE MAMMALS

Dolphin species
Porpoise species
Seal species
Whale species

AMPHIBIANS

Natterjack Toad

Dear Joe,
CC John Fitzgerald (as Gerry Leckey has retired); wildlifelicence unit as advised by OOO assistant fro Geryy Leckey's mailbox.

This is the third email of a sequence of 6 that we commenced on 9th December last. As you know, the former CC Chair agreed with us in writing a modular approach/response to follow up material for the Barrister and the legal module should be accommodated. We sent some such material on 2/3rd November last via yourself as CC Secretary. The attached PDF titled " CC legal issues follow up for Legal Module...etc" contains further such material seeking further opinion and clarification from Dr Browne. It also makes separate requests of the Dept./NPWS in relation to the legal matters in the opinion and implications thereof. The four further attachments described below are referred to in the main document - all of which relate directly to the legal matters/opinion to date and our follow up material.

We have been awaiting contact from the Dept./NPWS since October on the advice of the former CC Chair. We have been unable to contact NPWS since November and have not received any acknowledgements or replies to the first two emails in this sequence that we sent to you on 9th December last - except for a bounce-back from Gerry Leckey's email box indicating that he has retired and advising contact with wildlifelicence.chg.gov.ie - which we have also attempted to no avail. We phoned the number we have for NPWS and were switched to Killarney and a person there advised us that you may be in transition to Dept. Housing phones and email addresses, and that we should try the email convention firstname.surname.housing.gov.ie which we then re-tried on the first two emails in our sequence to no avail - and which we have continued with today. The Housing Dept. website advises that all staff are working from home and lists NPWS emails as still being under the [.chg.gov.ie](mailto:chg.gov.ie) suffix.

On a related matter, you you see reference in our main document at 1 below to the Public Consultation phase for the 2021.22 Derogation Declarations and our concern that last year's invitations were issued by 4th December for closing date 10th January. We have not yet received our invitation for this and know we will have a considerable amount of work to do for it. Ideally we will have the up to date responses from Dr Browne which will inform both the Dept./NPWS approach and ours regarding the proper legal basis for Derogations.

We would, therefore, appreciate acknowledgements and replies to our emails at the earliest opportunity,

Attachments:

1. Main Document - PDF - follow up material for the CC Legal Module
2. refers to - PQ response to TD (now Minister) Darragh O'Brien, November 2016 (note claim re 2011 Regulations vs. Dr Browne's Legal Opinion)
3. refers to - PQ response to former TD Clare Daly Nov. 2018 re individual case Licences issued 2016-2018 for controls on urban seagulls
4. refers to - Letter from Dept./NPWS to Balbriggan Community Committee (BCC) 22nd December 2016
5. refers to - Email from Dept./NPWS to 1st July 2016

We will shortly send email no. 4 of the sequence of 6 emails - this will also contain follow up material for Dr Browne and the CC legal Module, and further requests for the Dept. We then aim to send emails 5 and 6 to complete the sequence by close of business Friday 18th December.

We record again here our very serious and growing concerns regarding the lack of any contact from the Dept./NPWS since the CC's First Interim Report and our Minority Report were submitted last April, and since the resignation of the CC Chair in October. The seriousness of the material in our 6-email sequence should make the reasons for our growing concerns clear to the Dept./NPWS.

In conclusion, if you are in touch with Gerry can you please give him our regards and best wishes for his retirement.

Yours Sincerely,

Tom Cardiff and Gerry Coffey,
CC representatives on behalf of the Balbriggan Community Committee on urban seagull issues.

Consultative Committee (CC) on urban seagulls
Substantive points, questions and requests

Sent by Balbriggan Community Committee (BCC) Reps on the CC viz. Tom Cardiff and Gerry Coffey
To: Joe McMahon, CC Secretary and John Fitzgerald PO, NPWS – as Gerry Leckey has recently retired

This document contains further follow-up material for the CC's Legal Module (such follow-ups were agreed in writing via email with the former Chair prior to his departure in October – copy previously provided). It also contains some directly relevant requests/questions for the Dept./NPWS that relate directly to the "legal position".

This document was attached in the third Email (sent 16/Dec/2020) of six emails in a sequence commenced 9th December 2020. Other attachments in the third email for context and reference purposes were: a) Letter from DCHG/NPWS to BCC dated 1st July 2016; PQ responses to TD (now Minister) Darragh O'Brien November 2016; PQ response to TD Clare Daly, July 2018).

16th December

Dear Joe, John,

We are in touch with some further requests of you in your capacity a) as Secretary to the Consultative Committee (CC) and b) please note our copy circulation with some requests to Mr John Fitzgerald given that Gerry Leckey has recently retired. We made a number of attempts to contact the Dept./NPWS, since we submitted our previous follow-up legal material on 2/3 November last, to establish who the correct people are at management level in the Dept./NPWS for us to communicate with but as of this afternoon we have not had any response. If/when you see our current email sequence commenced on 9th December last - perhaps you or Mr Fitzgerald can advise us accordingly and take the necessary step with our material.

As ever we are happy to have all of our correspondence cc'd by you to all CC members.

These notes and the other four accompanying attachments in the covering email contain some follow-up material for Dr. Browne i.e. continuing work on the CC's legal module as agreed with the former Chair in writing before he retired. They also contain directly related (to the legal matters) questions and requests for the Dept./NPWS management. We would appreciate if you could copy circulate accordingly and confirm back to us please. We are also wondering if you have had any response yet from Dr Browne to our material submitted through you on 2/3 November last, and if not, when might we expect a response? As mentioned in the 2nd email in this sequence on 9th December, we are very concerned that we have to prepare for the Public Consultation phase of the 2021.22 Derogations Declarations process – for which, obviously, clarity on the legal position will be most important.

As you will have seen from our recent and ongoing correspondence, we have been continuing our work on the seagull issue – especially an historic and forensic examination of the legal situation. We are now very concerned for several reasons that no meaningful progress is being made in the legitimate interests of impacted communities and of public health and safety, both issues being key components of the CC's brief and Terms of Reference. The implications of the legal opinion to date and directly related issues are substantial. The CC will be just 2 years running by the time of the 2021.22 Declarations unless of course these are brought forward in line with recommendations in the First Interim Report and our Minority Report submitted last April.

The confirmation in the legal opinion from Dr Browne (that we received in September) that our observation regarding the legal decision threshold “**represent a threat to public health and safety**” as used in the 1986 Regulations/State-wide Derogation Declarations is materially higher than the Birds and Habitats Directives’ threshold “**in the interests of public health and safety**” came as no surprise to us. It is consistent with separate private legal advice received by us. We have been making this point to the Dept./NPWS repeatedly since 2016 to no avail, and it was also made repeatedly since then by all of our TDs, including the now Minister, and our MEP in their correspondence with the Dept./NPWS and with former Ministers Humphreys and Madigan. Notwithstanding, the Dept./NPWS has continued to date to ignore the fact that the threshold being applied to decisions on whether or not to derogate for species controls in order to protect people is materially higher than the legal threshold. We expect that Dr Browne’s confirmation of our view on this and on other important matters must lead to changes in the Dept./NPWS’ approach to future Derogation Declarations.

Therefore we request that the Dept./NPWS promptly advises the CC as to its intended actions, priorities and timelines given the that the framing of CC considerations and recommendations must be consistent with the law, and given that the next seagull breeding season preliminaries are just two months away. Furthermore, based on last year’s timing, invitations to stakeholders in the Derogations Declarations process are already 12 days overdue. BCC requires up-to-date information from the Dept./NPWS on its response to the FIR and MR recommendations from last April and also on the legal opinion received to date in order to make a fuller submission from our wider community committee.

In the round, we are obliged to restate that Ireland is the only country in Northern Europe that is effectively denying reasonable and legitimate protections to communities negatively impacted by freely proliferating urban seagull colonies, and that is also preventing such communities from protecting themselves by withholding a proportionate Licence (or Declaration) either like the one used in Northern Ireland with the legal control threshold identical to what is set out in the Wildlife Act 2000, Section 59, or with the actual threshold as specified in both the Birds and Habitats Directive.

We believe that this longstanding position, as held by the Dept./NPWS, of denying protection to citizens constitutes a serious failure in public administration for which the Dept./NPWS is primarily responsible (policy, licencing and resources). The Local Authorities, considering their awareness of the urban seagull problem and their “wider role” in public health and safety issues, to quote the two HSE Public Health Doctors letter to the Dept./NPWS in January 2017, clearly have a supportive role e.g. when compared with the UK, French and Dutch Local/Municipal Authorities on the urban seagull issue for very many years. This was acknowledged in writing by Fingal County Council in 2016. However such a role clearly remains subject to leadership, national policy and resources from the Dept./NPWS. The decision threshold being applied to derogations is clearly and materially non-compliant with the legal threshold in the EU Birds and Habitats Directives, is therefore illegal, and is therefore both de jure and de facto detrimental to negatively impacted communities. Please note that we are also looking with considerable and increasing concern at the legal threshold being applied by the Dept./NPWS for the Air Safety Derogation Declarations compared to the specified threshold in the Directive.

Furthermore, the legal opinion indicates that the Birds and Habitats Directives have not properly been given effect because a ‘national legislation’ regime is still being applied, the 2011 Regulations have not been implemented, and a material divergence exists in the derogation decision threshold. None of this was a surprise to us. The legal opinion quotes Article 2 of the Birds Directive viz.

Article 2: Member States shall take the requisite measures to maintain the population of the species referred to in Article 1 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.

In our follow up material to Dr Browne sent through you as Secretary on 2/3rd November, we asked several questions about the Article 2 obligations on Member States in the contexts of urban seagulls, natural habitats, and the specific provisions regarding “**aquatic species that range over long distances**”. Can you indicate when we might expect a response to our phase 1 follow up material from Dr Browne?

Further on legal matters, BCC was astonished to ourselves discover the Wildlife Act 2000, in particular its Section 59 - the very specific “**saver in the interests of public health and safety**”, and its stated legal threshold “**to preserve public health and safety**” –viz. the Northern Ireland and UK text and the unconditional authority of the Minister to issue licences for that purpose. It seems that NI/GB implemented that threshold in their 1981 Act to meet the Birds Directive. The reason we were so astonished was that the Irish 2000 Act and its section 59 provision has never been mentioned by the Dept./NPWS in correspondence, it is not mentioned anywhere in the 2018 Derogations Review Report, or in Minister’s statements e.g. former Minister Ring to the Senate in March 2017, or in the Department’s press statements/releases or indeed in any of very many PQ responses – all of which have claimed/or sought to infer that the Birds and Habitats Directives have in fact been fully implemented in Ireland. On what is a very clear record, the Dept./NPWS, and latterly the CC – with the sole exception of BCC’s contribution, have sought to subordinate the legitimate “**interests of public health and safety**” to bird conservation and other considerations since we raised the urban seagull issue in 2016. We stand firm with our view that the public health and safety of citizens is and must always be an overriding policy priority for the State and its institutions, and that the Dept./NPWS continues to fail seriously in this regard in relation to the urban seagull issue – in the face of overwhelming evidence that protections for people are urgently needed.

In our view, the 2000 Act/Section 59 is unequivocal as to a) the overriding priority of public health and safety vs. the Principal Act 1976 (as amended), and b) the complete authority of the Minister in that regard, notwithstanding the provisions of the Principal Act – i.e. the protection measures for birds. Clearly it also extinguishes – legally speaking – the arbitrary threshold used in the 1986 Regulations, as also does the Directives’ threshold. We have now examined the 15-year timeline for the realisation of the 2000 Act into law vs. what else was happening over time with the Directives, the 1986 Regulations, and the assessment at the time of the 1985 Seabird census vs the 1970 census. Continuing our work in the CC’s Legal Module, we have set out a series of follow up questions for the Barrister and also requests related to the legal matters for the Dept./NPWS.

We have heard nothing from the Dept./NPWS since April. The Chair notified us of his resignation in October. We were asked to comment (and did so) on CC 4 draft minutes (April 2020) in November. and there has been no indication yet as to a replacement Chair. The Dept./NPWS has not communicated any intended actions, or Dept./NPWS priorities, or timelines for/to the CC. the next seagull breeding season preliminaries will start in mid-February. BCC has therefore decided to resume and continue with our work outside the CC towards a proper public administration response to the urban seagull issue. We have not yet received any acknowledgements or replies to the email sequence that we commenced with the Dept./NPWS and the Secretary of the CC on 9th December last.

Further on legal matters, the 2018 Derogation Review Report (all bird species) by Aniar Ecology consultants dedicated its entire Section 2, to the governing legislation and its entire approach and key recommendations were predicated on legal compliance, and this was carried on into the CC by the now resigned CC Chair. In Section 2.5 the Review Report states as follows:

2.5 Situation in Ireland

2.5.1 Implementation into Irish law of the Birds Directive and the Article 9 derogation

In Ireland, the provisions of the Birds Directive are implemented through the Wildlife Act 1976 (as amended, hereinafter “the 1976 Act”), as well as through secondary legislation. This includes both the European Communities (Wildlife Act 1976) (Amendment) Regulations 1986 and the European Communities (Birds and Natural Habitats) Regulations 2011.

The following paragraphs are extracted from the legal opinion provided to the CC in September:

3.14. Thirdly, the reference to ‘threat’ in the 1986 Regulations seems to be a higher threshold than Article 9(1) of the Birds Directive which refers to ‘in the interests of public health and safety’.

3.16. It seems to me that the national system for allowing derogations under Article 9 of the Birds Directive is through State-wide declarations made by the Minister pursuant to the Act. For the reasons outlined above, I have doubts that the provisions in s.22 of the Act and the 1986 Regulations are inconsistent with Article 9 of the Birds Directive. For a start, the Act is national legislation which preceded the original 1979 Birds Directive (Directive 79/409/EEC) and, while it has been amended since then, appears to be concerned with a domestic regime for wildlife protection (including wild birds).

3.17. This is fortified by the fact that Article 9 of the Birds Directive would appear to be transposed in any event by Reg.54 and Reg.55 of the 2011 Regulations and it would be otiose to include these provisions in the 2011 Regulations if the derogation regime had been adequately transposed in the Act and / or the 1986 Regulations.

3.21. It seems to me that Reg.54 and Reg.55 of the 2011 Regulations are intended to be a transposition of Article 9 of the Birds Directive. Importantly, they also replicate the language from Article 9 and in particular the reference to ‘no other satisfactory solution’.

We are convinced that the legal opinion supports our views as expressed since 2016 that the stated “**Situation in Ireland**” in the 2018 Derogations Review Report (and indeed in various PQs, press releases, Ministerial statements since 2016) is materially and substantively incorrect. BCC would assume that the Dept./NPWS provided the statement of the “**Situation in Ireland**” to the consultants and that it was taken at face value rather than investigated or verified by them.

BCC’s major concerns have included the fact that it seems that that pertinent recommendations in the 2018 Review, including that which lead to the setup of the CC, and the legal parameters given to guide the CC are all based on a false and therefore misleading premise – the following particular elements of which, in our view fully justify our concerns viz.

I. We are convinced that the Dept./NPWS’ long repeated claim to be compliant with the Directives is false and misleading – the decision threshold being applied for Derogation Declarations since 1986 – the primary basis on which decisions are made as to whether or not it is necessary to protect citizens - has been and remains **materially higher** than that in the Directives; BCC requires an understanding from the Dept./NPWS as to why this is so

II. We are convinced, supported by the legal opinion, that the 2011 Regulations – Ireland’s intention to implement the Directives - have not been implemented despite the Dept./NPWS repeated claims, the claim in the 2018 Derogations Review Report, and the claimed legal basis for any recommendations from the CC; BCC requires an understanding from the Dept./NPWS as to why this is so

III. We are convinced that the decision threshold used in the 1986 regulations “**represent a threat to public health and safety**” is materially higher than the Birds and Habitats Directives’ threshold “**in the interests of public health and safety**” i.e. the core decision threshold for whether or not to control species in order to protect citizens that is being applied since 1986 is too high and therefore legally non-compliant with the Directives – as we have been claiming since June 2016; importantly, the lower Directive threshold indicates a ‘harm prevention’ approach to protection

measures for citizens and clearly does not require clinical competency in public health – just as such competency is not required of Rangers in case-by-case circumstances – a point also made repeatedly by BCC since 2016; BCC requires clarification from the Dept./NPWS on these points given that the legal opinion has agreed with us regarding the legal threshold

IV. There is no mention to our knowledge anywhere in correspondence, PQ replies, Ministers' Statements e.g. to the Seanad, in the 2018 Review, in contributions to the CC by the Dept., or in the Legal opinion (although Dr Browne does point to the ultimate authority of the Minister to decide whether the threshold has been met), of the Wildlife 2000 Act Section 59 – the “**saver in the interests of public health and safety**” which sets out categorically that

59.—Nothing in Part II, or section 51, of the Principal Act shall make unlawful anything which is done pursuant to and in accordance with a licence granted in that behalf by the Minister for the purpose of preserving public health or public safety, including air safety.

BCC requires an understanding from the Dept./NPWS as to why the 2000 Act appears to have been buried, and why its clear and overriding priority to public health and safety has been and continues to be denied and ignored by the Dept./NPWS

V. Indeed the Dept./NPWS appears to be flitting between the Wildlife 1976 Act (primary legislation) which has no mention of public health and safety at all yet appears (from PQ responses) to allow Rangers, with no clinical expertise in public health, discretion in individual cases to licence controls for reasons of public health and safety and the 1986 Regulations which apply a deliberate threshold of “**represent a threat to public health and safety**” for State-wide declarations which is not provided for in any primary legislation; the “**preserve public health and safety**” threshold in the most recent primary Wildlife 2000 Act has also been completely ignored as has the Minister's prerogative to licence for that reason. Under subsidiarity we believe that the EU delegates Public Health matters to member states, therefore it is no surprise that there is no ECJ case-law under the Birds or Habitats Directives regarding controls on such grounds. Furthermore, the actual legal threshold since 1979 – from the Directives- which is “**in the interests of public health and safety**”, and which is in the 2011 Regulations remains ignored. Urban seagull colonies are causing far more harmful impacts on and damage in communities than the bird species listed for State-wide culling in the Declarations, and the proven Antimicrobial Resistance threat from urban seagulls alone is a very serious issue.

In our view, it is most definitely and obviously not in the interests of public health and safety to have urban seagull colonies expanding in residential areas, on schools, on hospitals and on premises involved with human food production, storage, sale or consumption. Section 59/2000 Act is a crystal clear legal statement of and a legal protection of the overriding priority of public health and safety, and is also recognition of the Minister's authority, without any precondition or caveats, to licence accordingly on that basis. The timing of this provision is of considerable importance in that work on the Act commenced in 1984/85 (refer to Minister Síle De Valera's comments on the very long timeline in the Dáil Debate Committee stage) – i.e. just before implementation of the 1986 Regulations which a) claim to give effect to the Directive and b) apply to the 1976 Act which itself has no mention of public health and/or safety.

Therefore, in continuing our work on the CC legal module, BCC needs to understand from the Dept./NPWS why the 2000 Act took 15 years from its inception to be brought for ratification and why it has been effectively ignored. We need to understand why it uses the Directive's text for the threshold in the marginal notes (“**in the interests of public health and safety**”), but then uses the Northern Ireland text for the Minister's legal licencing threshold (viz. “**to preserve public health and safety**”) and why Ireland did not emulate licencing on this basis in Northern Ireland; we need to

understand why the 2000 Act makes no reference to the licencing threshold in the 1986 Regulations viz. **“represent a threat to public health and safety”**. We need to understand why the Act was not previously been mentioned by the Dept./NPWS in correspondence with BCC, in multiple press statements, in the 2018 Derogations Review Report, in multiple PQ responses – e.g. see attached PQ response to TD (now Minister) Darragh O’Brien in November 2016, nor in the Minister’s Statement to the Seanad in March 2017. When the sequence of legislative measures is laid out over the time line and events from 1976 – all of our questions are begged, as is the question as to what explains the clear disparity between policy and implementation vs. what is repeatedly attempted in the actual legislation. We need clear answers to all of these questions in order to be certain of the correct legal position for our continuing CC work and ahead of our submission to the Public Consultation for the 2021.22 Derogations Declarations.

Once again, since 2016, in the 2018 Derogations Review, and in the CC meetings the Dept./NPWS has insisted that it “obeys the law” and that “it will only act within the law”, yet it continues to refuse to apply the law as it relates to the legal threshold **“interests of public health and safety”** in proven circumstances under which all countries in Northern Europe have been protecting their citizens “for years” to quote Dept./NPWS official in our meeting on 8th December 2016. BCC will continue our work until Irish citizens are protected and treated equally under the EU law.

VI. The 1970 and 1985 seabird censuses raised concerns about the decline of Herring gulls – **although they were clearly qualified as only applying to coastal counts** - <https://jncc.gov.uk/our-work/herring-gull-larus-argentatus/#annual-abundance-and-productivity-by-geographical-area-republic-of-ireland>

BCC has provided peer-reviewed studies Irish, European and wider international that categorically point to the expansion of urban seagull populations. In 2016, and again to the 2018 Major Review, we provided the Dept./NPWS with the WHO Europe major report **from 2008** entitled “The Public Health Significance of Urban Pests” – a report which has never been acknowledged by the Dept./NPWS, the 2018 Review, or the CC - https://www.euro.who.int/data/assets/pdf_file/0011/98426/E91435.pdf in which very clear statements are made about the pest status of Herring gulls in the urban setting. The Dept./NPWS issued a press release in 2017 acknowledgement expansion of seagull colonies in to urban areas and said “it had no plans to control the species”. BCC quoted several of UK expert Peter Rock’s studies on urban seagull colonies in our 2017 Community Report – particularly the fact that urban colonies are a separate branch of the species and will never revert to seaward habitats – i.e. it is a mistake to consider urban colonies as a refuge/habitat that will restock seaward colonies. Mr Rock repeated his views in CC 3 and these are not recorded in the draft minutes and this remains as a dispute over those minutes maintained by BCC. **All of the above facts** have been and continue to be ignored by the Dept./NPWS and, regrettably, by the CC - except for us. **In our view, the Dept./NPWS is very seriously remiss on all of the above points vis a vis its obligations under Article 2 of the Birds Directive.**

Taking I–VI above in the round, in BCC’s view, the Dept./NPWS has clearly and deliberately relegated **“the interests of public health and safety”** to being their least important consideration vis a vis the urban seagull issue and there is no evidence of any serious or genuine attempt to assist or protect communities negatively impacted by the problem, as it continues to escalate year on year.

Moving on to other directly related legal matters, in the 1976 Act, Section 22 subsections 1 and 2 state as follows:

22. —(1) Subject to subsection (2) hereof, this section applies to every wild bird other than a wild bird of a species specified in the Third Schedule to this Act.
(2) The Minister may by regulations provide that—
(a) a wild bird of a species specified in the Third Schedule to this Act shall be a wild bird to which this section applies,
(b) this section shall not apply to a wild bird which is of a species specified in the regulations,

We understand 2.1 and 2.2 to be applying a specific exclusion whereby bird species (including the pertinent seagull species) listed in the **Third Schedule** of the Act are not covered by Section (19 or) 22 of the Act and are instead intended to be addressed by Regulations, in practice to date in Declarations viz. "The 1986 Regulations (as amended). We also understand that subsection 2.2 of the Act then allows that the Minister may reinstate by use of the Regulations any species (excluded from Section 22 by virtue of being listed on the **Third Schedule** to the protections provided by Section 22 e.g. if it transpires that any given species on the **Third Schedule** was not subjected to any controls in the Regulations. We also understand that any species on the **Third Schedule** that is specified and subject to controls in the Regulations is thus not covered by the Section 22 provisions – we take this to be the intention of 22.1 and 22.2 a) and b). Finally, we understand that any species subject to controls in the Regulations can only be subjected to the specified actions and controls, in the specified timeframes - that are set out in Schedules 1 and 2 of the Regulations – and is then otherwise protected by default i.e. no other control actions are permitted by the Regulations - given that Section 22 protections do not apply to species specified in the Regulations. We ask that the Dept./NPWS and Dr Browne review our understanding above and correct us if we have misunderstood anything.

If our understandings above are correct, it seems logical and reasonable to assume therefore that the purpose of the **Third Schedule** in the 1976 Act was to isolate (from Section 22 protections) all bird species that were likely to be or necessarily controlled for prescribed reasons, including public health and safety, by Regulations. And that a 'safety net provision' at Section 22.2.b) exists to enable the Minister to restore protections to any **Third Schedule** species that may not in fact be subjected to controls in the Regulations and would therefore 'fall out' of protection – but the Minister would be required to specify in the Regulations any/each species to which he was restoring Section 22 protections. Is our understanding correct here?

If Dr Browne confirms that our understandings above are correct, the circumstances as set raise a number of questions from us as follows for the for Dr Browne (and for the Dept./NPWS) - in particular given that the 2011 Regulations – i.e. the Directives, apparently, have not been implemented and therefore afford no over-arching protections – claimed, de jure or de facto:

- a) in 2016), when BCC first sought assistance with urban seagulls, (and in previous years back to 1986) by what legal means if any, were the three seagull species listed on the **Third Schedule** of the 1976 Act protected? The basis for our question is as follows - given i) that they are specified on the First Schedule of the 1986 Regulations and as such seem **not** to be covered by Section 22 – ref. subsections 1) and 2.(b), they are not subject to any control actions or time periods on Schedule 1 of the State-wide Declaration, and therefore they do not acquire any default protections that would apply outside of any specified control actions/period(s) were any such specified, and iii) the Minister does not appear to avail of Section 22.2.(a) to make that allowed provision in the Regulations i.e. to reinstate protections to the three pertinent seagull species under Section 22.
- b) In State-wide Declarations since and including 2017, when the three pertinent seagull species were added (to Schedules 1 and 2) for nest and egg controls in Balbriggan, did the three species then accidentally acquire general protection outside of the specified controls (to take nests or eggs 1 May 2017-20 to 30 April 2017-20) in the specified area of Balbriggan on the Schedule 2 Map, or indeed State-wide? I.E. does the limited Balbriggan Derogation accidentally or deliberately (or at all) provide general protection to the three seagull species outside of the prescribed nest/egg controls in Balbriggan?

c) With reference to the attached PQ response setting out summary licences for individual cases in the years 2016-2018 for Herring gulls for nest, egg and chick removals, and to the attached letter from the Dept. to BCC on 22nd December 2016:

- i) Note that the Dept./NPWS lists the licences as having been issued under Section 22 of the 1976 Act; it appears to us that seagull species are excluded from Section 22 by subsections 2a) and b) and the Third Schedule of the 1976 Act – can Dr Browne clarify whether we are correct or not? If we are correct how could such licences have been legally valid? Furthermore, the reason given for many of the case licences was “public health and safety”; there is no provision in Sections 22 or 42 or indeed anywhere in the 1976 Act for “public health and safety” reasons for controls. It seems to us that the 1986 Regulations do not cater for such Section 22 and 42 licences for such reasons, and furthermore, the Department has declared itself to not be a competent authority in matters of public health and safety. We ask that Dr Browne consider and set out for us how such licences were legally valid, and explain the comparative legal position vis a vis such licences compared to the wider urban seagull issue and “*the interests public health and safety*” context, and the fact that the 2011 Regulations have not been implemented?
- ii) **in the 22nd Dec letter from Dept./NPWS to BCC (attached separately)**, (context seagull nests and eggs) the Dept./NPWS sets out what it claimed then to be the legal position; no reference is made to Section 22 for nests and egg removal presumably indicating that seagulls are not covered by Section 22 due to them being on the Third Schedule and that section 22 does not provide for nest and egg removal anyway; Section 42 does not cater for nest and egg removal either; we have asked at i) above how individual licences for nest/eggs removal under sections 22 and 42 could have been legal.

A suggestion is made in the letter to us that SI 481 2010 Poison bait restrictions Regulation 5 (Derogations) might provide a solution exempt from Section 22 of the 1976 Act and linked to the 1986 Regulations (presumably the First Schedule which includes seagull species) – BCC makes two points, a) we did not seek any lethal control method (nests and eggs is generally classed as non-lethal), and b) the further suggestion from the Dept./NPWS in the letter whereby they would consider a form of ‘group’ control licence application e.g. from a housing estate (a suggested repeated subsequently in the CC) was assessed in private legal advice to us to require legislation because potential penalties for breaching the conditions of licences are very clearly attached in the legislation to the property owner, and could not fairly or reasonable apply e.g. to a residents’ committee who applied for a group licence where some residents exceed or breached the terms of any such ‘group’ licence(s). Can Dr Browne give us his opinion on this? Why would the Dept./NPWS be offering to consider a solution that would require seem to legislation (penalties and enforcement), when the Directive provides a solution “in the interests of public health and safety”, and nest and egg removal appears to be catered for under individual licences for many years anyway?

We were very surprised to receive such a suggestion and it was removed from consideration by the CC chair when we raised the enforcement questions. We noted subsequently that the Dept./NPWS in SI 166 of 2017 amended the 1986 Regulations to construe that the word “capture” was to include the taking of “nests and eggs”. *Perhaps the most important point to note is that in making this offer in this letter the Dept./NPWS in December 2016 had accepted a scale of the problem such that a) their case-by-case system was not fit for purpose for such a scale, and b) there was no alternative solutions e.g. spikes, nets etc. for the problems being caused. The Dept./NPWS subsequently granted the 2017 Balbriggan Derogation but continues to*

refuse to accept the logical and urgent need for Declaration-based protections in the interests of public health and safety in similarly impacted communities. In all of the above BCC is seeking legal clarity, indeed certainty, towards our continued CC work and also towards our submission to the Public Consultation phase for the 2021.22 Derogation Declarations – invitations for which appear to be overdue now

- iii) with reference to c) i) above we remain very confused as to how the Dept./NPWS was able to issue licences under Section 22 to remove seagull nests, eggs and chicks when the species seems to be excluded from Section 22 via the Third Schedule provision, is not reinstated to Section 22 protections by the Minister in the 1986 regulations, and SI 166 2017 appears to have been necessary to accommodate nest and egg removal under SI 254 1986. For completeness of our understanding, we would welcome a reasoned explanation of all of the above
- iv) we also note the very close similarity between the Third Schedule of the 1976 Act – i.e. species excluded from Sections (19 and) 22, and the current Northern Ireland General control licences as listed below. In particular, we have noted that the three seagull species are controlled (including killing) on the grounds **“to preserve public health and safety”** in Northern Ireland – i.e. the same threshold as is used in our Wildlife Act 2000 Section 59. However, whereas the full Third Schedule of the 1976 Act includes the three pertinent seagull species and is transposed fully into the First Schedule of the 1986 Regulations – the legal basis for the State-wide Derogation Declarations, we have also noted (PQ response) that the three seagull species were omitted from the State-wide Derogation Declaration’s Schedule 1 from 1986 until 2017 when the partial derogation for Balbriggan was added for those three seagull species.

1976 Act -Third Schedule

*Bullfinch
Carrion Crow
Greater Black-backed Gull
Herring Gull
Hooded (Grey) Crow
House Sparrow
Jackdaw
Jay
Lesser Black-backed Gull
Magpie
Pigeons, including Wood Pigeon, but not including carrier pigeons, racing homing pigeons or doves
Rook
Starling*

Current Northern Ireland General Licences

*Crow (TPG1, TPG2, TPG3)
Feral pigeon (TPG1, TPG2, TPG3)
Greater black-backed gull (TPG1, TPG2, TPG3)
Herring gull (TPG1, TPG2)
House sparrow (TPG1, TPG2)
Lesser black-backed gull (TPG1, TPG2, TPG3)
Jackdaw (TPG1, TPG2, TPG3)
Magpie (TPG1, TPG2, TPG3)
Rook (TPG1, TPG2, TPG3)
Starling (TPG1, TPG2)
Woodpigeon (TPG1, TPG2, TPG3)*

We therefore ask the following questions - given that 1970 and 1985-88 censuses that claimed a huge decline (90%) in Herring gull numbers did not take any account of inland colonies * <https://jncc.gov.uk/our-work/herring-gull-larus-argentatus/#annual-abundance-and-productivity-by-geographical-area-republic-of-ireland>

a) what evidence was used to remove completely Herring gulls from the 1986 Declaration, i.e. why weren’t controls left in place for inland/urban areas given that inland colonies formed no part of the 1970 or 1985 census evidence – there was no knowledge of their numbers, and b) if it was deemed acceptable to base the policy to remove gulls from the Declaration on the basis of ‘coastal only’ numbers, how and why have inland/urban numbers got any bearing on policy relating to coastal numbers when ample evidence has been provided to show that urban populations do not mix with or restock rural populations – most recently from UK expert Peter Rock to CC meeting 3 Feb 2020?

In our view it has been demonstrated categorically that it is fundamentally flawed to conflate urban numbers with coastal numbers for policy purposes. Expert evidence has been provided to the CC that urban populations do not and will not revert to seaward habitats. The new English policy 2020 and the new Dutch policy 2016 **both** respect that fact. To continue conflating urban and seaward

populations with a blanket protection is de facto proliferating urban-living species (Dept./NPWS press release July 2015 affirms this as policy) and is therefore knowingly and unjustifiably causing major issues in communities impacted by high-density colonies – with no valid or justifiable conservation goal.

**(BCC's evolving hypothesis – pulling formal evidence pieces together – is that gull numbers (seaward and urban combined) have been knowingly understated and policy still relies on very old and incomplete data despite evidence of major impacts on urban communities from urban living gull species – a species of “least concern” on the IUCN list in the above link. We are currently examining this and we will revert to the CC/Dept./NPWS with our conclusions.)*

The Department has refused on several occasions to answer questions or justify its position in these regards. In our follow up material to Dr Browne on 2/3 Nov we explored with him the legal obligation on Member States that he quoted in his first draft opinion viz. Article 2 of the Birds Directive as follows:

2.2. Member States must take the requisite measures to maintain the population of bird species 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.

We also queried aspects of the Habitats Directive specific to aquatic species, legally protected conservation areas, requirements on Member States to designate such areas and the mechanism by which legal protection is assigned to such areas. We neither believe nor accept that wild birds capable of and indeed guilty of serious harm to people are afforded unqualified legal protections, unlimited range and unconstrained rights to breeding locations in any and all places by the legislation and we await answers to our questions in all of these regards.

It seems – borne out by the legal opinion - that the Dept./NPWS has long taken an à la carte approach – without explanation or any transparency – to how it applies or does not apply the law. We are convinced that our view is vindicated by the legal opinion received to date and by experience of dealing with the Dept./NPWS. Of most concern to us is the fact that the legitimate interests of people, communities seriously impacted by uncontrolled urban seagull colonies, are clearly not being served despite overwhelming evidence of need and the long-established existence of the legal means to do so.

The Dept./NPWS position of relegating citizens to a lesser priority position was adopted in an email response to us on **1 July 2016 (attached)**, was maintained in the 2018 Derogations Review, and has been retained in the CC – except by BCC - until 18th April 2020 when, at the last minute upon sight of our Minority Report, two citizen-focussed recommendations for the 2020 Derogations Declaration were added to the CC's First Interim Report. However, the Dept./NPWS then ignored these recommendations and has not explained its reasons or commented in any way since, and it evaded the question in a PQ on this matter other than saying the First Interim Report had been received and was being considered, with no reference to the recommendations or to our Minority Report.

BCC has persisted in stating our view that the threshold “**represent a threat...**” is materially higher than the legal threshold in both Directives viz. - “**in the interests of public health and safety**”, and that no law would or could properly require citizens to accept the huge negative impacts of high density colonies of seagulls on their homes, schools, hospitals, food places et al.

The Dept./NPWS insisted that “we obey the law” in CC meeting 2 – the legal opinion clearly states that the 2011 Regulations have not in fact been implemented, and that the 1986 threshold is higher than both Directives' legal threshold. Clearly these facts must have serious implications and BCC's primary concerns are the early and transparent protection of citizens with effect from the 2021 breeding season – the preliminaries for which will begin in mid-February. Impacted communities

must be advised as early as possible in 2021 to discourage and prevent seagulls from nesting – at the very least on homes, schools, creches, colleges, hospitals and human food places – in the interests of public health and safety. If Dept./NPWS continues to allow urban seagull colonies to proliferate on such places any longer that will be a dereliction of a public duty in our view.

We are therefore requesting that the CC be provided with the following documents as a matter of some urgency given the imminence of the 2021 breeding season and also as vital legal material for our submission to the Public Consultation phase for 2021 Derogation Declaration. It occurs to us that Dr Browne will also need to see these documents when considering the follow-up material that we have already provided for his considerations and our further follow material above. The documents we are seeking are:

- I. Background notes and briefing material that gave rise to the “**represent a threat to public health and safety**” threshold that has been applied in State-wide Derogation Declarations since the 1986 Regulations were introduced. The answers that we need are as follows:
 - How was this threshold arrived at, especially given that there are no provisions in the Principal 1976 Act for public health and safety from which to draw on for the 1986 Regulations?
 - What organisation(s) (State, semi-State or non-State) were involved in or consulted towards arriving at and deciding to use this threshold? What levels, if any, of public health and public safety expertise were brought to bear on reaching this threshold?
 - Given that the EU Birds Directive came into force in 1979, why did the 1986 Regulations eschew the threshold as specified in Article 9.1.a) viz “**in the interests of public health and safety**” and apparently reach back over the Directive to the 1976 Act – which had no threshold – and effectively invent one arbitrarily? We need to see the documentation to establish whether this point was considered when 1986 was finalised?
- II. Background notes and Ministerial briefing material that gave rise to the Wildlife 2000 Act – particularly but not exclusively its Section 59 ‘**saver in the interests of public health and safety**’
 - The Dáil Debate Committee Stage minutes recorded the fact that the Wildlife 2000 Act was “fifteen years in the making” before the 1999 Bill/2000 Act was brought for ratification – i.e. work on the Bill commenced in 1984/85 – before the 1986 Regulations were implemented. Section 59 of the 2000 Act has a very specific saver described in its margins as being “in the interests of public health and safety” (i.e. the precise Directive text) but the legislation actually uses the text “**to preserve public health and safety**” when referring to the Minister’s authority to issue lawful control licences for that purpose notwithstanding the protections given to birds in the Principal Act. In all of our work on this issue since 2016, the 2000 Act has never been previously mentioned to our knowledge by the Dept./NPWS, despite that fact that it clearly respects the overriding priority of public health and safety, and the Minister’s authority to issue licences to preserve public health and safety.

We have noted that the threshold in the 2000 Act is identical to the threshold used in Northern Ireland, where simple General Licences (including the pertinent seagull species for nest/egg removal and shooting – except on a Sunday) under that threshold continue to apply today. Has Ireland ever issued such a General licence/s? Both jurisdictions on the island have aspired to reasonable convergence of laws and processes on materially similar issues since the Good Friday Agreement in 1998.

Therefore, we wish to see copies of the notes and briefing materials for the 2000 Act so that we can understand where that Section 59 provision originated, who was involved in agreeing it, why it was necessary, and why – as a piece of primary legislation - it remained clearly divergent from the earlier Birds Directive threshold – albeit materially closer to the Directive than the ‘in force’ Irish 1986 threshold. We wish to also know and understand why Northern Ireland’s legal text was used in the Section 59 legislation, and also, therefore, why were General Licences withheld

here when they were issued in Northern Ireland – especially if reasonable convergence of laws was/is an all-Ireland objective.

We also wish to know why the 2000 Act has never been mentioned in correspondence, Ministers' statements, press statements, PQ responses, the 2018 Derogations Review Report or indeed in the CC. The reason we wish to know this is the fact that Dept./NPWS and the CC (except for us) has continued to hold a position that public health and safety in the urban seagulls context is a lesser priority than bird conservation/research considerations – despite overwhelming evidence that communities are suffering serious negative impacts from urban seagull colonies.

With regard to the Balbriggan Derogation in 2017, was the 2000 Act Section 59 a consideration when it was approved by then Minister Humphreys?

We wish to see and understand any available documentation that sets out why the 2000 Act and the 2011 Regulations were ignored by the policy section in the Dept./NPWS, and was this policy section aware or not aware of the Oireachtas imperatives as set out in both primary and secondary legislation?

III. Background notes and Ministerial briefing materials on the 2011 Regulations

- We wish to know and understand the provenance of the 2011 Regulations, when work commenced on them and how these Regulations settled on the correct thresholds “*in the interests of public health and safety*” and “*the prevention of disease or injury*”.
- We also wish to know and understand, a full nine years on, why the 2011 Regulations and their legally prescribed thresholds have not been implemented. The two key thresholds, in our view, clearly support and require a risk/harm **prevention** approach when framing protection of citizens from urban seagull colonies which are incontrovertibly implicated in serious disease and AMR contamination risks, and which also are regularly involved in attacks, serious injury to people, and very high cost damage to property.

IV. As the legal opinion has stated that the 2011 Regulations have not been implemented – i.e. the Birds Directive has not properly been given effect in Ireland, and as it appears that the 2000 Act Section 59 is not being applied either, and as the Dept./NPWS continues to avail of “national legislation” viz. Sections 22 and 44 of the 1976 Act for the legality of its case-by-case licences and as the Annual Declarations therefore appear to draw their legality from the 1976 Act (as amended) and 1986 Regulations, BCC believes that it is also necessary to look at the documentation for following provisions in the 1976 Act Section 22:

Are we correct that Section 22 subsections (5) f) and g) apply to all species of wild birds except those listed on the Third Schedule of the Act, or those species in Regulations that may be reinstated by the Minister to be subject to Section 22 - viz. that It shall not be an offence for a person—

- (f) to take eggs of a protected wild bird for the purpose of having them hatched out, or, for such purpose, to move such eggs from the nest of such a bird to that of another bird of the same species, or**
- g) to destroy or remove any such nest which is built in or on an occupied building, or etc.**

BCC wishes to know and understand why does Section 22 f) and g) allow for the described actions of egg relocation and removal of nests from occupied building to not be an offence for birds other than those subjected to controls via the Third Schedule of the Act, or those that might be reinstated to Section 22 protections by the Minister in the Regulations under Section **22.2)? Just to be very clear**

on these questions, it appears to us that Section 22 f) and g) (long-term) cater for relocation/removal of nests and eggs for all species of birds except those on the Third Schedule or those reinstated to Section 22 protections via the Regulations, covering the Third Schedule of the Act for control purposes, by the Minister. What is the purpose/justification of 22f and 22g provisions? Why are the three pertinent seagull species excluded via the Third Schedule and then neither controlled in the State-wide Declarations for public health and safety, nor reinstated to Section 22 protection by the Minister?

We wish to know and understand whether the following provision and the end of Section 22 is an antecedent to Section 59 of the Wildlife Act 2000 (Amended)?

....and nothing in this section (22) shall make unlawful anything which is duly done pursuant to a statute (other than this Act) or statutory instrument, which is permitted to be done under such a statute or instrument or which is done pursuant to and in accordance with a licence or other permission granted or issued pursuant to such a statute or instrument or anything caused by or which results from, or is consequent upon or the effect of any other act or thing which is lawfully done.

.....

Ends here.

To be read in conjunction with four other attachments to the covering email viz.

- a) PQ response to Darragh O'Brien November 2016
- b) PQ response to then TD Clare Daly July 2018
- c) Letter 22nd December 2016 from Dept./NPWS to BCC
- d) Email 1st July 2016 from Dept./NPWS to BCC

Also to be read as attached to email no. 3 in a sequence of 6 emails commenced on 9th December 2020 to CC Secretary Joe McMahon for follow up with Barrister Dr David Browne as part of the CC's Legal Module and CC John Fitzgerald, PO, Dept./NPWS given the recent retirement of Dept./NPWS official Gerry Leckey who was originally notified to BCC as the officer dealing with the urban seagull issue.

16th December 2020

CC members Tom Cardiff and Gerry Coffey,
on behalf of the Balbriggan Community Committee

From: Darragh OBrien [mailto:Darragh.OBrien@Oireachtas.ie]
Sent: 09 November 2016 15:17
To: Tom Cardiff
Subject: Fw: eReplies to your Parliamentary Questions for 08/11/2016

Dear Tom,

I hope that this finds you well. Please see below the response that I have received regarding the PQ's I submitted on your behalf.

I hope this is of some assistance. If you have any further queries please do not hesitate to contact me.

Kind Regards,

Darragh



Darragh O'Brien TD
DUBLIN FINGAL

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Working with your Local Fianna Fáil Councillors:

- ✉ Adrian.Henchy@cllr.fingal.ie (Swords Ward)
- ✉ briandennehyff@gmail.com (Balbriggan Ward)
- ✉ darraghbutler1@gmail.com (Swords Ward)
- ✉ Eoghan.OBrien@cllr.fingal.ie (Malahide/ Howth Ward)



Dáil Éireann
FIANNA FÁIL
THE REPUBLICAN PARTY



I'd like to stay in touch with you. If you do not wish to receive any further information or contact from me, please email 'STOP' to this address.

----- Forwarded by Darragh OBrien/Members/Oireachtas on 09/11/2016 14:19 -----

From: PQ Replies
To: Darragh OBrien/Members/Oireachtas@HOUSES,
Date: 08/11/2016 20:34
Subject: eReplies to your Parliamentary Questions for 08/11/2016
Sent by: Patricia Fitzgerald

DAIL QUESTION

NO.277,278,279,280,281, 282, 283&284

To ask the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs if section 3(1)(A) of the European Communities (Wildlife Act 1976) (Amendment) Regulations 1986 (SI No. 254 of 1986), gives effect to the EU derogation that permits and legalises a range of control measures to be carried out on otherwise legally protected bird species, expressly and explicitly, for the protection of public health and safety and the prevention of disease or injury; and if she will make a statement on the matter.

- Darragh O'Brien.

* For WRITTEN answer on Tuesday, 8th November, 2016.

Ref No: 33483/16

To ask the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs the direct authority and the frequency with which the process is carried out for the review or updating as necessary, production and publication of both the declaration under 3(1)(A) of the European Communities (Wildlife Act 1976) (Amendment) Regulations 1986 (SI No. 254 of 1986) and the derogation species list that it covers; the exact means by which this process is initiated, conducted and completed; and if she will make a statement on the matter.

- Darragh O'Brien.

* For WRITTEN answer on Tuesday, 8th November, 2016.

Ref No: 33484/16

To ask the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs the organisations which are represented in the process that produces the declaration under 3(1)(A) of the European Communities (Wildlife Act 1976) (Amendment) Regulations 1986 (SI No. 254 of 1986) and, in respect of the organisation(s) represented, the grade levels, functions, qualifications and expertise of the personnel involved in the process, with particular reference to and relevance to the legal and stated purpose of the declaration; and if she will make a statement on the matter.

- Darragh O'Brien.

* For WRITTEN answer on Tuesday, 8th November, 2016.

Ref No: 33485/16

To ask the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs the way and by whom the final decision is made in respect of each bird species as to whether it is included on or removed or excluded from the derogation list covered by the declaration under 3(1)(A) of the European Communities (Wildlife Act 1976) (Amendment) Regulations 1986 (SI No. 254 of 1986); and if those decisions are reached on a consensus basis, which organisation holds a casting vote if one is needed; and if she will make a statement on the matter.

- Darragh O'Brien.

* For WRITTEN answer on Tuesday, 8th November, 2016.

Ref No: 33486/16

To ask the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs the way in which, the formats in which, the frequency with which, and the sources from which information is gathered, verified and assessed each time the declaration under 3(1)(A) of the European Communities (Wildlife Act 1976) (Amendment) Regulations 1986 (SI No. 254 of 1986) is updated and published; and if she will make a statement on the matter.

- Darragh O'Brien.

* For WRITTEN answer on Tuesday, 8th November, 2016.

Ref No: 33487/16

To ask the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs if any gull species (details supplied) have ever previously been considered for inclusion on the derogation list under SI No. 254 of 1986; if so, if she will summarise the considerations made and the basis for the decisions taken; if none of the pertinent gull species have previously been considered for listing, the circumstances that would necessitate consideration of any or each of the gull species to be considered for listing; and if she will make a statement on the matter.

- Darragh O'Brien.

* For WRITTEN answer on Tuesday, 8th November, 2016.

in view of the fact that the herring gull, the greater black-backed gull and the lesser-black-backed gull are listed on the first Schedule attached to the pertinent regulations, and are therefore eligible to be considered for inclusion on the derogation list if any of these gull species

Ref No: 33488/16

To ask the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs if there are any safeguards in the process used to produce the declaration under 3(1)(A) of the European Communities (Wildlife Act 1976) (Amendment) Regulations 1986 (SI No. 254 of 1986), and the derogation species list that it covers, to ensure that a protected species that may also be currently red listed as a species of conservation concern, would and will nonetheless be made amenable to control measures in circumstances in which it poses a risk to public health and safety, including injury or sickness; and if she will make a statement on the matter.

- Darragh O'Brien.

* For WRITTEN answer on Tuesday, 8th November, 2016.

Ref No: 33489/16

To ask the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs if there are safeguards in the process used to produce the declaration under 3(1)(A) of the European Communities (Wildlife Act 1976) (Amendment) Regulations 1986 (SI No. 254 of 1986), and the derogation species) list that it covers, if she will advise of same; the person who has the ultimate decision authority regarding a red listed species that may in fact need to go onto the derogation list; if there are no such safeguards in the current process, the way in which her department intends to address such a procedural issue; and if she will make a statement on the matter.

- Darragh O'Brien.

* For WRITTEN answer on Tuesday, 8th November, 2016.

Ref No: 33490/16

REPLY

Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs (Ms. Heather Humphreys, T.D.):

I propose to take Question Nos , 277, 278, 279, 280, 281, 282, 283 and 284 together.

The EU Birds Directive is implemented in Ireland under the Wildlife Acts and the European Communities (Birds and Natural Habitats) Regulations 2011. Under the terms of the Directive, all Member States of the EU are bound to take measures to protect all wild birds and their habitats. Under Article 9(a), Member States may derogate in the interests of: public health and safety; air safety; to prevent serious damage to crops, livestock, forests, fisheries and water; and for the protection of flora and fauna.

These derogations are achieved by way of declarations, which are made on an annual basis, under the European Communities (Wildlife Act, 1976) (Amendment) Regulations 1986, as amended, which allow the capturing and killing of some listed bird species in certain situations. There are no specified formats for, nor specified sources from which, relevant information which may be considered in this regard. The declarations are made under the legislation by the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs and there is no voting process involved.

The herring gull, the greater black-backed gull, the lesser-black-backed gull, the starling and the sparrow, while listed in the European Communities (Wildlife Act, 1976) (Amendment) Regulations 1986, are not currently included in the derogations. A review of the derogations is scheduled for 2018, as advised to the EU Commission, and this will take account of all relevant factors, including perceived threats, distribution and population data available on the bird species in the derogations. The review will include a public/stakeholder consultation element. In the meantime, species can be added to or dropped from the derogations list, depending on new information available at the time of making annual derogations.

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<http://www.oireachtas.ie/parliament/ga/eolas/beartasriomhphoistanoireachtaisagusseanadh/>

Table 1 - Permits for Seagulls granted under Section 22 of the Wildlife Acts - 2016 to 2018

Species	Name of body/Organisation	Location	Reason for licence	Year
Lesser Black-backed Gull	3rd Level Institution	Howth, (Ireland's Eye) Co. Dublin	Educational/Scientific	2018
Herring Gull		Kilmore Quay (Great Sallee) Co. Wexford.		
Monitoring & Recording				
Lesser Black-backed Gull	Conservation organisation	Lough Ree Islands, Co. Longford/Roscommon.	Educational/Scientific	2018
Monitoring & Recording				
Lesser Black-backed Gull	Private Company	Rooftops of Building, Malahide Road, Kilmore, Dublin 5.	Health & Safety issue	2018
Herring Gull				
Removal of Nest/Eggs	Car showrooms	Rooftops of buildings, Killkeen Road & Kilmore Road, Dublin 12.	Damage to Cars	2018
Herring Gull				
Removal of Nest/Eggs	Property Developer	Rooftop of building 2-3 Townsend Street, Dublin 2.	Demolition of building	2018
Herring Gull				
Removal of Nest/Eggs	Pharmaceutical Company	Rooftop of building, Grangecastle Business Park, Clondalkin, D.22.	Health & Safety issue	2018
Herring Gull				
Removal of Nest/Eggs	Alcoholic Beverage Company	Rooftop of buildings St. James Gate, Dublin 8.	Health & Safety issue	2018
Herring Gull				
Removal of Nest/Eggs	Development Company	Rooftop of Building, O'Connell Street, Dublin 1.	Health & Safety issue	2018
Great Black-backed Gull	Conservation organisation	Wexford Harbour, Wexford.	Educational/Scientific	2018
Monitoring & Recording				
Black-headed Gull	NPWS	Lady's Island Lake, Wexford.	Tern Conservation	2018
Lesser Black-backed Gull				
Mediterranean Gull				
Removal of Nest/Eggs				

Species	Name of Body/Organisation	Location	Reason for licence	Year
Herring Gull	Electricity Company	Rooftops of building in Fitzwilliam Street & Mount Street Upper, Dublin 2.	Demolition of Building	2017
Lesser Black-backed Gull				
Removal of Nest/Eggs	Conservation Organisation	Black-headed Gull Colony, Galway, Co. Kilkenny.	Educational/Scientific	2017
Black-headed Gull				
Monitoring & Recording				
Herring Gull	School in Co Louth	In school premises and playground	Health & Safety issue	2017
Relocate Nest/Eggs to Roof				
Herring Gull	Company	Rooftop of Shopping Centre, Central Dublin.	Health & Safety issue	2017
Removal of Nest/Eggs				
Herring Gull	Apartment Company	Rooftop of building	Health & Safety issue	2017
Removal of Nest/Eggs				
Herring Gull	Dublin Medical School	Lower, Liffey Street, Dublin 1.	Health & Safety issue	2017
Removal of Nest/Eggs				
Herring Gull	Car company	Rooftop of building	Health & Safety issue	2017
Lesser Black-backed Gull				
Removal of Nest/Eggs		Rooftops of Buildings, Killen Road & Kylemore Road, Dublin 12.	Damage to Motor Cars	2017
Herring Gull	Local authority	Rooftop of Building, Tallaght, Dublin. 24	Health & Safety issue	2017
Removal of Nest/Eggs				
Herring Gull	Charity organisation	Rooftop of building, Christchurch Square, Dublin 8.	Health & Safety issue	2017
Removal of Nest/Eggs				
Herring Gull	Pharmaceutical Company	Rooftop of buildings Grangecastle Business Park, Clondalkin, D.22.	Health & Safety issue	2017
Removal of Nest/Eggs				
Herring Gull	Alcoholic Beverage Company	Rooftop of buildings	Health & Safety issue	2017
Removal of Nest/Eggs				
Herring Gull	3rd Level Institution	St. James Gate, Dublin 8.	Health & Safety issue	2017
Great Black-backed Gull				
Collect faecal samples from ground, rock & veg		Howth (Ireland's Eye) Co. Dublin. Kilmore Quay (Great Saltee) Co. Wexford.	Educational/Scientific	2017

Herring Gull Removal of Nest/Eggs	Property Company	Rooftop of Trinity Point, South Leinster Street, Dublin 2.	Health & Safety issue	2017
Herring Gull Removal of Nest/Eggs	Property Company	Rooftops in City Quay, Dublin 2.	Health & Safety issue	2017
Great Black-backed Gull Testing Eggs	Research Body	Wexford Harbour, Co. Wexford.	Educational/Scientific	2017

Species	Name of Body/Organisation	Location	Reason for licence	Year
Herring Gull Removal of Nest/Eggs	Alcoholic Beverage Company	Rooftop of buildings, St. James Gate, Dublin 8.	Health & Safety issue	2016
Black-headed Gull Removal of Nest/Eggs	NPWS/Wexford Wildfowl Reserve	Lady's Island Lake, at North Slob, Co. Wexford.	Roseate Tern Conservation	2016
Herring Gull Removal of Nest/Eggs	School in North Dublin	Main Entrance of Sports Hall, Co. Dublin.	Health & Safety issue	2016
Herring Gull Removal of Nest/Eggs	Firm of Solicitors	Rooftop Patio of solicitors, St. Stephens Green, Dublin 2.	Health & Safety issue	2016
Lesser Black-backed Gull Removal of Nest/Eggs	Construction Firm	Rooftop of building, Lwr Baggot Street, Dublin 2.	Health & Safety issue	2016
Herring Gull Removal of Nest/Eggs	Theatre	Rooftop of Theatre, Lower Abbey Street, Dublin 1.	Health & Safety issue	2016
Great Black-backed Gull Lesser Black-backed Gull Herring Gull Monitoring & Recording	Conservation organisation	Ireland's Eye, Lambay Island, Rockabill, Howth Head, Bray Head, Co. Dublin/Wicklow.	Educational/Scientific	2016
Herring Gull Lesser Black-backed Gull Removal of Nest/Eggs & any dead birds	Private Company	Rooftop of building IDA Business Park, Cork Road, Waterford City.	Health & Safety issue	2016
Herring Gull Removal of Unoccupied/Nests	Development Company	Rooftop of building, Dunmore East, Waterford.	Health & Safety issue	2016
Common, Mediterranean, Black Headed & Lesser Black-backed Gull Monitoring & Recording	Conservation organisation	Co. Offaly & Co. Tipperary.	Educational/Scientific	2016

Table 2 - Permits for Seagulls granted under Section 42 of the Wildlife Acts - 2016 to 2018

Species	Name of body/Organisation	Location	Reason for licence	Year
Sea Gulls - Various Scare Only	Healthcare Company	Facility at Drumconlan, Castlebar, Co. Mayo.	Health & Safety issue	2018
Sea Gulls - Various Destroy Nest/Eggs	Hospital in Co Louth	Rooftops of Hospital, Drogheda, Co. Louth.	Health & Safety issue	2018
Herring Gull = Scare Only Great Black-backed Gull = Cull Max (10)	Conservation Organisation	Rockabill Island, Skerries, Co. Dublin.	Common, Roseate & Arctic Tern Conservation	2018
Herring Gull Lesser Black-backed Gull Scare Only	Car Company	Rooftops of buildings, Killean Road & Kilmore Road, Dublin 12.	Damage to Cars	2018
Herring Gull Remove/Relocate Chicks	Development Company	Rooftop of building Townsend Street, Dublin 2.	Demolition of building	2018
Herring Gull Remove/Relocate Chicks	Private Resident	Rooftop of Private Resident, Skerries, Co. Dublin.	Health & Safety issue	2018
Herring Gull Remove/Relocate Chicks	Alcoholic Beverage Company	Rooftop of buildings St. James Gate, Dublin 8.	Health & Safety issue	2018
Herring Gull Remove/Relocate Chicks	Private Resident	Rooftop of Private Resident, Balbriggan, Co. Dublin.	Health & Safety issue	2018
Herring Gull Remove/Relocate Chicks	Private Resident	Rooftop of Private Resident, Raheny, Dublin 5.	Health & Safety issue	2018
Herring Gull Lesser Black-backed Gull Remove/Relocate Chicks	State Company	Rooftops & Grounds, Waterford Industrial Estate, Cork Road, Waterford.	Health & Safety issue	2018
Lesser Black-backed Gull Destroy Nest/Eggs & Cull	NPWS	Inish & Sgarbheen Islands, Lady's Island Lake, Wexford.	Sandwich Tern Conservation	2018
Sea Gulls - Various Scare Only	Local Authority	Stillorgan Reservoir, Brewery Road, Stillorgan, Co. Dublin.	Health & Safety issue	2018

Herring Gull Remove/Relocate Chicks	Dublin Medical School	Rooftop of Premises St Stephens Green, Dublin 2.	Health & Safety issue	2017
Herring Gull Lesser Black-backed Gull Remove/Relocate Chicks	Car Company	Rooftops of Buildings, Killeen Road & Kylemore Road, Dublin 12.	Damage to Cars	2017
Herring Gull Lesser Black-backed Gull Remove/Relocate Chicks	Local Authority	Rooftop of Building, Tallaght, Dublin 24.	Health & Safety issue	2017
Herring Gull or Lesser Black-backed Gull Remove/Relocate Chicks	NPWS	St. Pappins Road, Glasnevin, Dublin 11.	Chick fell from nest	2017
Herring Gull Remove/Relocate Chicks	Charity Organisation	Rooftop of Building, Christchurch Square, Dublin 8.	Health & Safety issue	2017
Herring Gull Remove/Relocate Chicks	Pharmaceutical Company	Rooftop of Premises, Grange Castle Business Park, Nangor Rd. Clondalkin, Dublin 22.	Health & Safety issue	2017
Remove/Relocate Chicks	Private Company	Rooftops of Buildings, Malahide Road, Dublin 5.	Health & Safety issue	2017
Herring Gull Remove/Relocate Chicks	Development Company	Rooftop of Building, South Leinster Street, Dublin 2.	Health & Safety issue	2017
Herring Gull Remove/Relocate Chicks	Development Company	Rooftops of Building, City Quay, Dublin 2.	Health & Safety issue	2017
Herring Gull Remove/Relocate Chicks	Residential Property	Rooftop of Residential Property, Dundrum, Dublin 14.	Health & Safety issue	2017
Herring Gull Remove/Relocate Chicks	Public Gallery	Rooftop of Gallery, Parnell Square, Dublin 1.	Health & Safety issue	2017
Herring Gull Remove/Relocate Chicks	Church body	Cross Avenue, Booterstown, Blackrock, Co. Dublin.	Health & Safety	2017

Sea Gulls - Various Destroy Nest/Eggs	Hospital in Co Louth	Roof tops of Hospital, Drogheda, Co. Louth.	Health & Safety issue	2016
Lesser Black-backed Gull Cull No Bag Limit	NPWS	Inish & Sgarbheen Lady's Island Lake, Wexford Wildfowl Reserve, Wexford.	Sandwich Tern Conservation	2016
Herring Gull = Scare Great Black-backed Gull = Cull Max (4)	Conservation Organisation	Rockabill Island, Skerries, Co. Dublin.	Common, Roseate & Arctic Tern Conservation	2016
Gulls-Various Scare Only	Local Authority	Stilorgan Reservoir, Stillorgan, Co. Dublin.	Health & Safety issue	2016
Gulls-Various Scare Only	Local Authority	Ballyboden Reservoir, Ballyboden, Co. Dublin.	Health & Safety issue	2016

Herring Gull Remove/Relocate Chicks	Hotel	Roof top of Hotel, Harcourt Street, Dublin 2.	Health & Safety issue	2017
Gulls-Various Scare Only	Local Authority	Stillorgan Reservoir, Stillorgan, Co. Dublin.	Health & Safety issue	2017
Gulls-Various Scare Ony	Local Authority	Ballyboden Reservoir, Ballyboden, Co. Dublin.	Health & Safety issue	2017

Table 3 - Permits for Seagulls refused under the Wildlife Acts - 2016 to 2018

Species	Name of body/Organisation	Location	Reason for licence	Year
Herring Gull Cull	Hotel/Restaurant	Ardmore, Co. Waterford.	Health & Safety Issue	2018 Sec 42
Herring Gull Lesser Black-backed Gull Black-headed Gull Cull	Meat Processing Plant	Clonee, Co. Meath.	Health & Safety issue	2018 Sec 42

Herring Gull Lesser Black-backed Gull Black-headed Gull Cull	Meat Processing Plant	Clonee, Co. Meath.	Health & Safety issue	2018 Sec 22
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From: Gerry Leckey [<mailto:Gerry.Leckey@ahg.gov.ie>]
Sent: 22 December 2016 12:56
To: Tom Cardiff
Subject: RE: Response before Christmas

Mr Cardiff

I attach copy of a letter which has issued to you.

Regards.

Gerry

[REDACTED]
Sent: 22 December 2016 09:33
To: Gerry Leckey; Secretary General; Niall ODonnchu; Wildlife Licence; Ministers Office; Catherine Ryan; alan.farrell@oireachtas.ie
[REDACTED]
Subject: Response before Christmas

Dear Mr. Leckey,

All previous correspondence on our gull issues and our meeting with you on December 8th last refers.

You will recall that gave an undertaking to us at our meeting that you would reply with DAHRRG/NPWS 'position' before Christmas. It would be a considerable relief to our community to know the DAHRRG/NPWS has taken our case on board and the State will be taking the necessary measures to turn back the worst impacts for the gull infestation in our estates before end February 2017, thereby enabling us to protect our families from the risks already evidenced and understood in your wider experience. For that reason, if a positive response is being prepared, we would welcome that 'before Christmas'.

If DAHRRG/NPWS is preparing a negative or an equivocal response, we would also wish to know that now, and we will make our arrangements for the next phase of our campaign . If a response is not provided 'before Christmas', we will continue making those arrangements – some of which we have flagged to you already - accordingly.

At this stage it seems more than strange to us that we have had to go to such lengths to date to get our State to enable us to protect our families from serious risks that are acknowledged and "beings addressed for years now" – to quote you yourself at our meeting – in every EU country around us, by invoking an existing National and EU legal ph&s provision that is already in use in our State for decades for several other bird species, without reference to the HSE or anybody else for that matter per your Dáil reply to Darragh O'Brien TD.

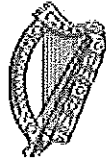
All considered, a comprehensive statement of DAHRRG/NPWS 'position' is now well overdue considering we first wrote to you in May 2016 about many real health and safety concerns impacting pru families and wider community.

Yours sincerely,

Tom Cardiff - for our committee and wider support base throughout Balbriggan and its districts as notified in our Declaration/Petition document.

Tá an t-eolas sa ríomhphost seo faoi rún, chomh maith le gach comhad atá ceangailte leis, agus i gcomhair úsáid an duine nó an chórais a bhfuil sé dírithe air amháin. Má fhaigheann tú an ríomhphost seo trí bhotún, cuir scéal chugainn ag webmaster@ahg.gov.ie. Tá an ríomhphost seo arna sheiceáil ag scanóir víreas agus dealramh air go bhfuil sé glan.

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An Roinn Ealaíon, Oidhreachta,
Gnóthai Réigiúnacha, Tuaithe agus Gaeltachta

Department of Arts, Heritage,
Regional, Rural and Gaeltacht Affairs

22 December 2016

Mr. Tom Cardiff
118 Hampton Cove
Balbriggan
Co. Dublin
K32EY90

Dear Mr. Cardiff,

I refer further to our ongoing correspondence and particularly to the meeting between the Department, Fingal County Council and your Committee on 8th December 2016.

The Department committed at the meeting to reflect on the views expressed by you and other members of the committee and to write to you before Christmas setting out its position as discussed at the meeting. It should be noted that notwithstanding your recent ultimatum the Department did not commit to issue this correspondence by 2pm on 15th December. In the intervening period the Department received a number of phone calls as well as further lengthy email correspondence from you in relation to this issue.

Firstly, I wish to express my thanks to you and your committee for meeting with the Department and Fingal County Council. As it did at the meeting, the Department acknowledges the concerns that your Committee has raised. With that in mind, we are happy to explore options that may be available. However, as explained in detail at the meeting, the Department can and will only operate within the legal environment in which it finds itself. As you know, the law sets out various obligations that must be adhered to and any options brought forward must be in keeping with those obligations.

For the sake of clarity I will again set out the options available under Irish law.

Declarations under the European Communities (Wildlife Act, 1976) (Amendment) Regulations 1986 (S.I. No. 254/1986) ("the 1986 Regulations")

These Regulations provide that a declaration may be made providing that certain named species may be captured or killed within the state. Prior to the species being named in a declaration, certain matters must be established, including that the species "*is a threat to public health or safety*". However, this legislation is predominately aimed at dealing with the species themselves (i.e. the individual birds) rather than dealing with issues regarding their nests and eggs. As explained to you

at the meeting adding the various gull species to this declaration, if it was deemed possible, would not provide you with the legal means to remove nests and eggs, which is the only option that you have specifically requested. This is not a valid legal approach under this particular legislation.

Section 42 – Wildlife Act 1976 (“the 1976 Act”)

Under section 42 of the 1976 Act in specified circumstances, including:

Where serious damage is being caused by protected wild birds to—

(a) food (including human food products and animal feeds) livestock, poultry or agricultural crops (including vegetables or fruit) either on pasture or on cultivated land,

(g) buildings and other structures and their contents

permission may be sought from the Minister to scare, capture or kill a protected wild bird that a person reasonably believes is causing the damage. This would allow the targeting of individual birds causing damage, but would not include the removal of nests or eggs.

European Communities (Birds and Natural Habitats)(Restrictions on use of Poisoned Bait) Regulations 2010 (S.I. No. 481 of 2010) (“the poisoned bait Regulations”)

Under Regulation 5 of the poisoned bait Regulations a derogation from the protections afforded to birds under section 22 of the 1976 Act is possible. A derogation may be obtained where, amongst other things, it is in the interest of public health and safety. Furthermore, in accordance with this law, a derogation may be granted where there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species.

As you know the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs (DAHRRGA) is not a public health authority and does not, itself, have the means or competence to analyse or determine public health risks. Such competence and expertise lies with the appropriate public health authorities. The Department has noted your correspondence with the Health Protection Surveillance Centre (HPSC) on this issue and the responses received from that authority. The Department particularly notes the HPSC’s conclusion:

So, the available evidence, while indicating that gulls and other pest birds do carry potentially harmful pathogenic bacteria, does not indicate ... that they transmit these pathogens to any meaningful extent to humans. With the decrease in their numbers, this already small risk must also fall proportionately.

However, just because these birds pose little if any, in the way of a Public Health risk, this does not mean, as you and your neighbours will be keenly aware, that they do not pose a considerable and upsetting nuisance.¹

Notwithstanding this conclusion, as communicated to you at our meeting, the Department endeavoured to formally raise the matter itself with the HSE and on the 6th December. I wrote to the Acting Chief Public Health Specialist seeking a view from the HSE as to whether it

¹ Email from Dr. Paul McKeown, HPSC, 1st June 2016

would consider that the herring gull issue in north Dublin is a public health issue. The Department is waiting for the response to this question. I am sure you will appreciate that such specialist matters require input from the appropriate experts and that the Division of this Department, whose primary role relates to nature conservation, does not contain such expertise. Nonetheless, as we have stated previously, the Department will endeavour to offer as much as assistance as it can reasonably do and in that regard we hope that our formal communication with the HSE will facilitate further exploration of the available options.

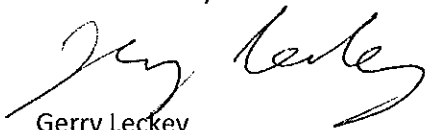
Additionally, under this legislation a derogation may only be granted "*where there is no satisfactory alternative*". The Department takes this to mean that other methods of preventing the issue should have been undertaken and demonstrated as being unsuccessful at resolving the issue at hand. It would appear that this would mean that mitigation measures have been competently explored, but subsequently failed.

The Department may only operate within the laws available to it. As such, applications for derogations may also be reviewed within the scope of the law and the tests prescribed under the law must be met. Nonetheless, the Department is happy to explore any flexibility that may be available and in keeping with the law. In that regard and as outlined at our recent meeting the Department could explore with your group the possibility of community led applications; that is, where, instead of individual applications for derogations, a housing estate representatives group or a community group could apply on behalf of a group of residents or a particular housing estate. In such circumstances it could be explored as to whether a representative sample of residents who have tried unsuccessfully to mitigate against gull nesting could be taken as an indication that there is "*no satisfactory alternative*" for that particular housing estate. Obviously, in such circumstances the group would need to supply evidence of the problem, sufficient evidence of unsuccessful mitigation attempts and there would need to be determination that the disturbance to the nests was in the interests of public health and safety.

It must be noted that such an approach has not been undertaken before in Ireland and the Department may only explore same in the context of a trial based approach, which could feed into the planned review of derogations in 2018. As part of this approach the Department is willing to explore with Fingal County Council the possibility of making a small amount of funding available to allow the community to further develop the understanding of the gull presence in the town, including by commissioning a best practice survey of gull numbers and nesting habits in the locality.

I hope that your committee will consider the proposals put forward in this letter.

Yours sincerely



Gerry Leckey
Assistant Principal
Wildlife Licensing Unit
National Parks and Wildlife Service
7 Ely Place, Dublin 2

From: Gerry Leckey - (DAHG) [<mailto:Gerry.Leckey@ahg.gov.ie>]
Sent: 01 July 2016 17:48
To: Tom Cardiff
Subject: Seagulls in Balbriggan

Dear Mr Cardiff,

I refer to your previous correspondence and to our telephone conversation in relation to gulls in Balbriggan.

As you are aware birds are protected under the EU Birds Directive (2009/147/EC). Article 1 of the Directive establishes its wide scope of application, as follows:

1. *This Directive relates to the conservation of **all species of naturally occurring birds in the wild** state in the European territory of the Member States to which the Treaty applies. It covers the protection, management and control of these species and lays down rules for their exploitation.*
2. *It shall apply to **birds, their eggs, nests and habitats.***

As such herring gulls enjoy protection under this legislation. The population of herring gulls has greatly declined in Ireland (by about 90%) over the past 40 years, probably due to improvements in managing landfill sites as well as other factors. Nonetheless there are substantial numbers in some coastal towns and cities, including north Dublin city and county. Herring gulls can be a nuisance because of noise, mainly in July and early August, and may steal food from people eating outdoors. In the latter case, the easy availability of food sources from litter or feeding by people may be contributing factors to the bird behaviour of concern.

Article 5 sets out the fundamental protective provisions to be afforded to these (Article 1) birds, by prohibiting:

- (a) ***deliberate killing or capture by any method;***
- (b) ***deliberate destruction of, or damage to, their nests and eggs or removal of their nests;***
- (c) *taking their eggs in the wild and keeping these eggs even if empty;*
- (d) ***deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive;***
- (e) *keeping birds of species the hunting and capture of which is prohibited.*

Ireland, like all EU Member States, is bound by the requirements of the Birds Directive. As you raise in your correspondence Article 9 deals with the circumstances under which derogations from Article 5-8 might be allowed:

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.*

Applications for derogation licences are considered on a case by case basis. As I understand it, the Department has not received an application for such a licence nor has it received any definitive proposal in relation to the control of birds in the context of your correspondence. The primary role of the National Parks and Wildlife Service (NPWS) of this Department is the implementation of EU law in Ireland in respect of nature conservation. NPWS does not undertake control programmes, such as culls for example, in relation to bird species protected under the Directive. The Department will consider any application for such a licence, having regard to the provisions of the relevant legislation.

Before a derogation licence can be issued Article 9 provides a number of tests that are required to be met. The first test in Article 9 is clear in its wording in relation to “*where there is no other satisfactory solution*”. This is a prerequisite in considering any of the potential derogation provisions. The Court of Justice of the European Union (CJEU) has made this very clear also in *LRBPO and AVES v Région Wallone (C-10/96)* when it stated at paragraph 17; “[t]hat said, it must, however, be pointed out that a derogation from the system of protection established by the Directive and, in particular, from the prohibition of killing or capturing protected species, as laid down in Article 5(a), can be accorded only if there is no other satisfactory solution.” As such, in relation to an application for a derogation licence an applicant would need to demonstrate that there is no other satisfactory solution.

In regard to the second test, following our previous discussions it is assumed that you may be interested in pursuing an application for a derogation on the grounds of “public health”. Generally, it is understood that “public health” typically refers to the population as a whole, for example the World Health Organisation describes public health as: “*Public health refers to all organized measures (whether public or private) to prevent disease, promote health, and prolong life among the population as a whole*” and the Oxford Dictionaries defines it as “*The health of the population as a whole, especially as monitored, regulated, and promoted by the state*”. The European Commission has produced a Guidance document – “Guide to Sustainable Hunting under the Birds Directive”- in relation to the Birds Directive. While the Guidance is very useful in an overall sense it is somewhat limited in respect of the derogations in Article 9.

However, the Commission Guidance (section 3.5.5, p.55) outlines “*Public health and safety may be locally affected where the presence or the feeding of birds causes a demonstrable risk to human health or increases risk of accidents. In many cases habitat alterations or exclusion of birds will be appropriate solutions. For example, at many airports, management measures are taken to prevent bird strikes with aeroplanes.*” The Guidance (section 3.5.6) goes on to reiterate that other (non-fatal) measures must first be explored: “*Such solutions involve in particular habitat management (to reduce the attractiveness to birds and in particular flocks of birds) and various scaring techniques including sometimes shooting. In most cases other satisfactory solutions are available which are more effective and durable than hunting, with the exception of falconry. Therefore under Article 9 these must be used instead.*”

As such in terms of an application for a licence or a project proposal the applicant would be required to demonstrate that a demonstrable risk to public health tied to a specific problem exists. As you will appreciate, the Department is not a competent authority in relation matters of public health. However, I note that you have contacted the Health Protection Surveillance Centre (HPSC) in regards to this matter. It is not clear if the HPSC has provided a definitive conclusion in this regard. The Department intends to raise the question generally with the HPSC in the coming week.

In conclusion, the Department will consider any application for derogation but can only do so in compliance with European law. NPWS of the Department does not undertake control programmes, and perhaps this is a matter best raised at a local level in the first instance with relevant local authorities, and I note your correspondence with Fingal County Council in this regard.

Finally, you requested contact information for relevant officials in the European Commission. DG Environment is the relevant Directorate for the nature conservation Directives. It can be contacted by post at: European Commission, Directorate-General for Environment, 1049 Brussels, Belgium or by online submission at http://ec.europa.eu/environment/contact/form_en.htm - please note that if contact the Commission via the online submission form, you should choose the “Nature and biodiversity” theme from the relevant drop down box to ensure a correct referral.

I regret the delay in replying, but there was a considerable volume of text and issues to consider and consultation with other colleagues in the Department.

Yours sincerely

Gerry Leckey
Assistant Principal
Wildlife Licensing Unit
National Parks and Wildlife Service
Department of Arts, Heritage and the Gaeltacht
7 Ely Place
Dublin D02TW98

Dear Tom and Gerry,

I have emailed John Fitzgerald this morning, (extract below as part of a longer email):

Firstly, and importantly, BCC have asked me to raise the matter of when they should expect a response to their submissions to the Barrister via the CC Secretary dated 2nd & (3rd Nov. - a modified attachment) and 16th Dec. in relation to the "ongoing Legal Module of the Consultative Committee". I would strongly urge that the department reply to them with a timescale asap.

They raise the point that this response would have been of value in their ability to respond to the consultation on the derogation.

I trust this satisfies your request

At this point I should also inform you, to prevent any further effort on your part, that I informed John at that time that I was standing down immediately from the role of chairman of the CC. Thus our planned meeting and any further correspondence is not necessary.

I wish you well in finding a solution to the issues you have with gulls at Balbriggan

With kind regards

Alan

[REDACTED]
Sent: Sunday 17 January 2021 19:41

[REDACTED]
Subject: Fwd: Follow up questions from BCC for the CC Legal Module (Gulls Committee)

Dear Alan,

Firstly, we should mention that we have always observed a protocol set up by the former Chair that communications would be sent to him or the Secretary for sharing with Consultative Committee (CC) members. We will continue on that basis unless you set up a different arrangement. For the record, we have no problem - in fact we would prefer as a default - to have all of our contributions to the cc shared with all members. Otherwise, if we do communicate anything that is in confidence with you, we will state that clearly on the material.

Regarding the ongoing Legal Module of the Consultative Committee (CC) and your intended follow up on our behalf with the Dept./NPWS tomorrow to seek replies to our submissions to the Barrister via the CC Secretary Joe McMahon dated 2nd & (3rd Nov. - a modified

attachment) and 16th Dec. last – we have provided copies of all of our material for your convenience attached below.

Niall Feery at the Dept./NPWS advised us in December that the CC Secretary Joe was temporarily out of the Office, and we have not yet heard back from Joe since November. Accordingly, we thought we should copy all of the material to you below as Joe had indicated to us in November that the former Chair decided, having resigned, that he did not need to see this material. It occurred to us therefore that you might not have this material yet yourself if Joe is still out of the Office.

It is important for us to convey to you the huge emphasis insisted upon to us since 2016 that the Dept./NPWS, the 2018 Derogations review and latterly the former CC Chair and the Dept./NPWS members have placed on the law and legal compliance. We and our elected representatives (cross-party including our then and current MEP) have maintained since 2016 that the Dept./NPWS has in fact not been compliant with the law (the Birds and Habitats Directives) – but we have all been consistently ignored by the Dept./NPWS. The first Draft Legal opinion from Dr Browne seen by us last September essentially agreed with our assessment of the legal position – i.e. that the Dept./NPWS is not complying with the law, e.g. vis-à-vis the 1986 Regulations still being used for Derogations using a materially higher decision threshold than the Directive, and the fact that the Dept. takes an a la carte approach to the law with the Birds Directive provisions in 2011 Regulations never having been implemented. This, among several other legal issues, is why we have put so much time and effort into the CC's Legal Module – including taking our own private legal advice. Our informed position can be distilled from the attachments below.

In providing his First Draft Legal Opinion on 11th August to the Dept./NPWS, the Barrister replied comprehensively to all CC members submissions within roughly three weeks as the questions were submitted to him by the former Chair in late July. It is now 2.5 months since we submitted the first phase of the material attached below and one month since we submitted the second phase material for the Barrister to consider - as arranged/agreed with the former Chair in October before he resigned, and subsequently as confirmed in early November with the CC Secretary.

Clearly, at this stage, even with your planned intervention tomorrow as discussed in our previous email, we will not have any response to any of our legal module material in time for inclusion in our PCP submission the closing date for which is next Weds, 20th Jan at 5pm despite the Dept./NPWS 'invitation' on 30th Dec. to submit on legal matters to the PCP. You will be aware that we are participating in this particular PCP under considerable protest for reasons as outlined to you in our previous email to you on 14th January.

As a professional courtesy to you we advise you here that we raised the first phase legal issues in the opinion with the senior Minister for the Department Darragh O'Brien on 13th November last and we anticipate a response shortly. Since last week, we are in the process of raising the pertinent NPWS PCP matters with Minister O'Brien and with Minister-of-State for Heritage(NPWS) Malcolm Noonan, and with our local TDs, our Councillors and our MEP – all of whom we have kept informed on the issues (periodically) on an ongoing basis.

As mentioned in earlier correspondence with you – once we saw the Dept./NPWS ignoring the CC First Interim Report (FIR) and Minority Report (MR) recommendations last April, and the shambolic implementation of the 2021 Derogation Declaration (posted incorrectly

twice, then finally posted correctly three weeks late, and ignoring the FIR/MR recommendations) we were left with no choice but to resume our campaign activities. Given the political issues around forming a new Government and the pandemic, we deferred resuming our actions until November. Nonetheless, we think it will be apparent to you from our material below that we have continued our CC work with commitment in relation to its Legal Module.

We recognise that we are sending you a lot of material. The reality is that there is a limited period that arises once in each year within which to act substantively on the issue and we are – for a sixth breeding season - now into that period this year relative to the 2021.22 Derogation Declaration. If the Dept./NPWS had acted in good faith on the FIR/MR recommendations in April 2020, we would be on an improved track towards progress – but they didn't and we aren't, and we have no basis for trust in NPWS. On the contrary, based on their current PCP and their continued refusal to engage or answer questions, it seems to us that they intend to do nothing in the 2021.22 Derogation Declarations unless they are instructed to act.

In conclusion, our entire focus is now on the Derogation Declaration for 2021.22 with immediate attention to the findings of the CC's Legal Module, the first phase of which last August must, in our view, inform prompt additional recommendations to the Dept./NPWS in the interests of public health and safety – which can run legally in parallel with whatever research objectives may also emerge.

We will resume the 'timeline' background information that we commenced (from our perspective) for you as soon as we complete our submission to the current PCP.

With kind regards,

Tom Cardiff and Gerry Coffey,
On behalf of the Balbriggan Community Committee cc'd above.

----- Forwarded message -----

[REDACTED]

Date: Mon, 2 Nov 2020 at 15:04

Subject: Re: Follow up questions from BCC for the CC Legal Module (Gulls Committee)

To: Joe McMahon <Joe.McMahon@chg.gov.ie>

[REDACTED]

Dear Joe,

Our emails in the past few days regarding the CC legal module and our follow up submission of documents for Dr Browne's consideration refer.

We have attached a covering letter and four substantive documents below for Dr Browne's consideration. The covering letter explains our approach with the documents..

Note that we have not cc'd Derek as the former Chair as we understand he has now retired from the CC and will be in 'handover' mode preparing for a replacement Chair. Can you check with Derek whether he needs to be cc'd with this email and attached documents and if so please forward them to him on our behalf? Otherwise, as discussed we are happy to have our email and documents shared with and confined to the CC members.

Kind regards,

Tom Cardiff and Gerry Coffey, on behalf of Balbriggan Community Committee cc'd above

On Thu, 29 Oct 2020 at 12:15, Joe McMahon <Joe.McMahon@chg.gov.ie> wrote:

Hi Tom,

Thanks for the Clarification, I deal with so many acronyms with different meanings, so always good to double check.

Joe

From: Tom Cardiff [mailto: [REDACTED]]
Sent: Thursday 29 October 2020 12:05
To: Joe McMahon
Cc: HC Siobhan Coffey; HC Gene McKenna; HC Don Costigan; HC Dave Sorensen; Peadar O'Kelly; BR Tony Everitt; John Keogh; [REDACTED]
Subject: Re: Follow up questions from BCC for the CC Legal Module (Gulls Committee)

Good Morning Joe,

Re your question below "*Can I clarify what you mean by private CC communication?*", yes of course.

BCC has always followed the ex-Chair's protocol rather than us cc'ing documents among the CC members. We are providing our follow up legal questions on that basis, but through you given the Chair's resignation and his view as stated on 22/Oct that follow up questions

should be addressed with Dr Browne. Therefore, we regard our documents and the replies from Dr. Brown as for circulation by you as Secretary among CC members only.

Kind regards,

Tom and Gerry

On Thu, 29 Oct 2020 at 11:27, Joe McMahon <Joe.McMahon@chg.gov.ie> wrote:

Good Morning Tom,

Thanks for your email.

Can I clarify what you mean by private CC communication? Do you mean that it is private BCC communication, or document and response that can be circulated to the Gulls Consultative Committee membership (NPWS, BWI, Fingal County Council)?

Yes, I can send the questions on to Dr. Browne.

Kind Regards,

Joe

From: Tom Cardiff [mailto:]

Sent: Thursday 29 October 2020 11:18

To: Joe McMahon

Cc: HC Siobhan Coffey; HC Gene McKenna; HC Don Costigan; HC Dave Sorensen; Peadar O'Kelly; BR Tony Everitt; John Keogh; Thomas Cardiff

Subject: Follow up questions from BCC for the CC Legal Module

Dear Joe,

We are in touch with you directly as Secretary to the CC given that Derek has notified us of his resignation as Chair.

With reference to our agreement with Derek email (ref email 22 Oct last on follow up legal questions for Dr Browne), we expect to send a document with BCC's follow-up questions to you in the next couple of days.

As our document is a private CC communication (i.e. not for circulation outside CC members), can you confirm that you will send it to Dr Browne on our behalf please?

We anticipate that the response from Dr Browne to our follow up questions should complete BCC's contribution to the legal module, leaving no overhang, from our perspective at least from the legal module, for a new Chair.

Kind regards,

Tom and Gerry on behalf of BCC cc'd above

OPINION

1. Scope

- 1.1. I have been asked to prepare an opinion for the Consultative Committee to undertake a review of the issues surrounding the impact of gulls in urban areas (the “**Committee**”). In particular, I have been asked to provide an opinion on 18 questions furnished to me on 17 July 2020.
- 1.2. In preparing the opinion, I have reviewed the materials sent to me by the Wildlife Unit of the National Parks and Wildlife Service (the “**NPWS**”) in the Department of Culture, Heritage and the Gaeltacht (the “**Department**”) on 16 and 17 July 2020.
- 1.3. The Committee was convened by the Department following a recommendation of the Report on the Review of the Derogation Process under Article 9 of the EU Birds Directive. The purpose of the Committee is to consider the impact of gulls in urban areas and to provide recommendations as appropriate to deal with such impacts within the scope of national and European legislation.
- 1.4. The Committee comprises of representatives of BirdWatch Ireland, Balbriggan Community Committee (“**BCC**”), Fingal County Council (the “**Council**”), and the NPWS on behalf of the Department. The Committee was set up in June 2019, following a major Review of the Derogations Process in 2018. Its brief is to review the negative impacts of urban-living seagull colonies on communities and to make recommendations. The Committee is supported by a secretariat from the NPWS and Dr. Derek McLoughlin of Aniar Ecology who was appointed as Independent Chair of the Committee.
- 1.5. I am instructed that a first interim report (“**FIR**”) on the progress of the Committee was prepared by Dr. McLoughlin in March 2020, following a number of meetings from June 2019 to February 2020. A separate minority report was also prepared on 20 April 2020 which I understand was submitted to the Department. This minority report has also been reviewed by Dr. McLoughlin who prepared a review of the minority report.¹

¹ The Chairperson’s review is dated 19 April 2020 and appears to precede the minority report.

- 1.6. I understand from reading the FIR and minority report that the issue of what is meant by public health and safety is a key concern of the BCC. Section 7.2 of the FIR made a number of recommendations to carry out a desk-top review of the level of risk, including emerging risks, that urban gulls pose to the general public and to further assess the public health and safety implications of sleep deprivation in humans as a result of noise (including intensity and duration) from gulls, in the context of wildlife in general.
- 1.7. I think it is fair to say that the BCC minority report strongly emphasises that public health and safety is a key concern and articulates a concern that this was not expressly adopted or accepted in the FIR. I do not express a view on this.
- 1.8. The BCC minority report also advocates the approach adopted by Natural England (“NE”) and argues that a generalised licensing approach would be preferable, noting at para.17 that the new seagull management policy for England relies on ‘Class’ licences for high-density colony situations in urban areas e.g. for Local Authorities, Pest Control companies and contractors. A ‘Class’ licence is in effect a ‘localised’ or ‘multi-case’ regional General Licence for competent, trusted service providers such as Local Authorities. The BCC minority report proposes that the Department/NPWS should include the Herring gull (and other gull species if necessary) in the 2020 / 2021 State-wide Declaration and extend the Balbriggan provision to all impacted urban areas in a General Licence, permitting nest and egg removal on public health and safety grounds.
- 1.9. I do not propose to comment on whether the FIR reflects the concerns of the stakeholders to the Committee or whether it properly captures the particular concerns of the BCC but rather to focus on the particular legal issues that arise. First, I propose to first set out the relevant legal provisions in the consolidated Birds Directive (Directive 2009/147/EC) and case-law of the Court of Justice of the European Union (“CJEU”). I then propose to look at the national statutory provisions in both the Wildlife Act 1976 (the “Act”), as amended, and the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No.477 of 2011) (the “2011 Regulations”). Thirdly, I will address the specific legal queries that were furnished to me on 17 July 2020. Finally, I will provide a summary of my conclusions.

2. Relevant Provisions in Birds Directive

- 2.1. At a general level, the Birds Directive relates to the conservation of *all* species of naturally occurring birds in the wild state in the European territory of Member States. It covers the protection, management and control of these species and lays down rules for their exploitation. It also applies to birds, their eggs, nests and habitats.²
- 2.2. Member States must take the requisite measures to maintain the population of bird species 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
- 2.3. Article 5 of the Birds Directive provides that Member States must take the requisite measures to establish a general system of protection for all species of birds, prohibiting in particular⁴:
- a) deliberate killing or capture by any method;
 - b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests;
 - c) taking their eggs in the wild and keeping these eggs even if empty;
 - d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of the Directive;
 - e) keeping birds of species the hunting and capture of which is prohibited.
- 2.4. Article 4 of the Birds Directive refers to special conservation measures for Annex I bird species in order to ensure their survival and reproduction in their area of distribution.⁵

² Directive 2009/147/EC Art.1.

³ Directive 2009/147/EC Art.2.

⁴ Directive 2009/147/EC Art.5.

⁵ Directive 2009/147/EC Art.4.

- 2.5. Gulls are identified in Part B of Annex II to the Birds Directive under the heading of *Laridae*. Article 7 of the Birds Directive provides that, owing to their population level, geographical distribution and reproductive rate throughout the Community, the species listed in Annex II may be hunted under national legislation. Member States must ensure that the hunting of these species does not jeopardise conservation efforts in their distribution area.⁶
- 2.6. Article 9 of the Birds Directive provides that Member States may derogate from the provisions of Articles 5 to 8 of the Directive, where there is no other satisfactory solution, for the following reasons⁷:
- a) in the interests of public health and safety or in the interests of air safety or to prevent serious damage to crops, livestock, forests, fisheries and water or 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.
- 2.7. Where a derogation is granted, it must specify⁸:
- 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.

⁶ Directive 2009/147/EC Art.7(1).

⁷ Directive 2009/147/EC Art.9(1). While Article 9 is analogous to Article 6(4) of the Habitats Directive, the threshold is not as high, given that Article 6(4) requires that, in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected.

⁸ Directive 2009/147/EC Art.9(2).

Relevant Case-law of the European Court

- 2.8. The CJEU (and the previous incarnation of the ECJ) have considered the derogation provision in Art.9 of the Birds Directive in a number of cases.
- 2.9. In one of the earliest cases on the Birds Directive in *Commission v Belgium*,⁹ it was held that in order to institute an effective system of protection the Birds Directive lays down three types of provisions. First, it provides for general prohibitions against the killing, capturing, disturbing, keeping and marketing of birds and also against the destruction, damaging or removal of their nests and eggs. Secondly, it provides for derogations from those general prohibitions for the bird species listed in the Annexes to the Directive.
- 2.10. Thus, provided that certain conditions and limits are laid down and respected, Member States may authorize the marketing of the species listed in Annex III and the hunting of the species listed in Annex II to the Directive. It was held that it follows that, for the bird species which are not listed in Annexes II and III, or if the conditions and limits provided for are not observed, the general prohibitions remain applicable.
- 2.11. It was also held that Art.9 of the Birds Directive authorizes the Member States to derogate from the general prohibitions and from the provisions concerning marketing and hunting. However, this possibility is subject to three conditions.
- 2.12. First, the Member State must restrict the derogation to cases in which there is no other satisfactory solution. Secondly, the derogation must be based on at least one of the reasons listed exhaustively in Article 9 (1) (a), (b) and (c). Thirdly, the derogation must comply with the precise formal conditions set out in Article 9(2), which are intended to limit derogations to what is strictly necessary and to enable the Commission to supervise them. Although Art.9 authorizes wide derogations from the general system of protection, it must be applied appropriately in order to deal with precise requirements and specific situations.

⁹ *Commission of the European Communities v Kingdom of Belgium* (C-247/85) [1987] E.C.R. I-3029 at para.7.

- 2.13. Therefore, although Article 9 authorizes wide derogations from the general system of protection, it must be applied appropriately in order to deal with precise requirements and specific situations.¹⁰
- 2.14. The criteria which the Member States must meet in order to derogate from the prohibitions laid down in the Directive must be reproduced in specific national provisions.¹¹
- 2.15. In *Associazione Italiana per il World Wildlife Fund*¹², it was held that Article 9 of the Birds Directive must be interpreted as meaning that it authorizes the Member States to derogate from the general prohibition on hunting protected species laid down by Articles 5 and 7 of the Directive only by measures which refer in sufficient detail to the factors mentioned in Article 9(1) and (2). The Court also accepted the possibility of derogating from the prohibition on hunting species of birds not listed in Annex II to the Directive, to which Article 7(1) refers, in particular for the reason set out in Article 9(1)(c) of the Directive.¹³
- 2.16. In *Ligue pour la protection des oiseaux and Others*,¹⁴ the ECJ confirmed Article 9 of the Birds Directive authorises Member States to derogate from provisions relating, inter alia, to hunting and that the hunting of wild birds for recreational purposes during the periods mentioned in Article 7(4) of the Directive may constitute a judicious use authorised by Article 9(1)(c) of that Directive, as do the capture and sale of wild birds even outside the hunting season with a view to keeping them for use as live decoys or to using them for recreational purposes in fairs and markets.¹⁵

¹⁰ *Commission of the European Communities v Kingdom of Belgium* (C-247/85) [1987] E.C.R. I-3029 at para.7; *Commission of the European Communities v Italy* (C-262/85) [1987] E.C.R. I-3073 at para.7.

¹¹ *Commission of the European Communities v Kingdom of Netherlands* (C-339/87) [1990] E.C.R. I-0851, para.28.

¹² *Associazione Italiana per il World Wildlife Fund, Ente Nazionale per la Protezione Animali, Lega per l'Ambiente - Comitato Regionale, Lega Anti Vivisezione - Delegazione Regionale, Lega per l'Abolizione della Caccia, Federnatura Veneto and Italia Nostra - Sezione di Venezia v Regione Veneto* (C-118/94) [1996] E.C.R. I-01223.

¹³ *Associazione Italiana per il World Wildlife Fund, Ente Nazionale per la Protezione Animali, Lega per l'Ambiente - Comitato Regionale, Lega Anti Vivisezione - Delegazione Regionale, Lega per l'Abolizione della Caccia, Federnatura Veneto and Italia Nostra - Sezione di Venezia v Regione Veneto* (C-118/94) [1996] E.C.R. I-01223 at para.21.

¹⁴ *Ligue pour la protection des oiseaux and Others v Premier ministre and Ministre de l'Aménagement du territoire et de l'Environnement* (C-182/02) [2003] E.C.R. I-12105.

¹⁵ *Commission of the European Communities v Italy* (C-262/85) [1987] E.C.R. I-3073 at para.38.

2.17. The ECJ also held in *Ligue pour la protection des oiseaux and Others* that the conditions which must be met for such hunting to be authorised under Article 9(1)(c) of the Directive include the absence of any other satisfactory solution.¹⁶

2.18. The requirement that there is no other satisfactory solution should be construed restrictively. For example, in *Commission v Spain*¹⁷, it was held on the facts that since the condition that there must be no other satisfactory solution is not fulfilled in the present case, the hunting of woodpigeons during their return to their rearing grounds cannot be authorised pursuant to Article 9(1)(c) of the Directive.

2.19. In *Commission v Finland*¹⁸, it was also held on the facts that that condition cannot be considered to have been satisfied when the hunting season under a derogation coincides, without need, with periods in which the Directive aims to provide particular protection. As the ECJ noted, there would be no such need, in particular, if the sole purpose of the derogation authorising hunting were to extend the hunting seasons for certain species of birds in territories which they already frequent during the hunting seasons fixed in accordance with Article 7 of the Directive.¹⁹

2.20. In *WWF Italia & Ors.*²⁰, it was held that Article 9(1)(c) requires Member States to ensure that, in all cases of application of the derogation provided for and for all the protected species, authorised hunting does not exceed a ceiling consistent with the restriction on that hunting to small numbers imposed by that provision, and that ceiling must be determined on the basis of strict scientific data. It was also held that national implementing provisions concerning the ‘small numbers’ referred to in Article 9(1)(c) must enable the authorities responsible for authorising hunting

¹⁶ *Ligue pour la protection des oiseaux and Others v Premier ministre and Ministre de l'Aménagement du territoire et de l'Environnement* (C-182/02) [2003] E.C.R. I-12105 at para.15.

¹⁷ *Commission of the European Communities v Kingdom of Spain* (C-135/04) [2005] E.C.R. I-02561 at para.18.

¹⁸ *Commission of the European Communities v Kingdom of Finland* (C-344/03) [2005] E.C.R. I-11033.

¹⁹ On the facts, it was held that the condition laid down in Article 9(1)(c) that there be no satisfactory solution other than spring hunting, was fulfilled in respect of eider, golden-eye, red-breasted merganser, goosander, velvet scoter and tufted duck was not satisfied by the arguments put forward by Finland.

²⁰ *WWF Italia and Others v Regione Lombardia* (C-60/05) [2006] I-05083.

derogations in respect of birds of a given species to rely on criteria which are sufficiently precise as to the quantitative ceilings to be complied with.

- 2.21. While the judgments concern derogations in the case of hunting, in my view the general principles apply when considering the derogation provision in Article 9 of the Birds Directive.

3. Relevant Provisions in Irish Law

- 3.1. Ch.2 of Pt II of the Act provides that wild birds and their nests and eggs, other than wild birds of the species mentioned in the Third Schedule to the Act, shall be protected.
- 3.2. Section 22 of the Act provides the enforcement of protection of wild birds and allows the Minister to grant a licence to a person to capture or kill humanely or capture and humanely kill a protected wild bird of a species specified in the licence or to hunt, in accordance with the licence, on such day or during such period of days as is specified in the licence or to examine, inspect or take the nests or eggs of protected wild birds of a species.
- 3.3. Section 22(4) of the Act provides that any person who hunts a protected wild bird or wilfully takes or removes the eggs or nest of a protected wild bird otherwise than under and in accordance with such a licence or wilfully destroys, injures or mutilates the eggs or nest of a protected wild bird or wilfully disturbs a protected wild bird on or near a nest containing eggs or unflown young is guilty of an offence.
- 3.4. Notwithstanding the provisions of the Act, the European Communities (Wildlife Act, 1976) (Amendment) Regulations 1986 (S.I. No.254 of 1986) (the “**1986 Regulations**”) provide that where the Minister is of the opinion that a species referred to in the First Schedule to the Regulations— (i) is a threat to public health or safety, (ii) is likely to cause serious damage to crops, livestock, fisheries or forestry, (iii) is likely to cause damage to flora and fauna, the Minister may declare that, for the purpose of preventing disease or injury, the species may be captured or killed in any part of the State or throughout the State by any of the means, arrangements or methods set out in the Second Schedule to these Regulations,

during such period or periods specified in the declaration and by the person or persons or class of person or persons specified in the declaration. The First Schedule to the 1986 Regulations expressly refers to herring gulls, greater black-backed gulls and lesser black-backed gulls.

- 3.5. The 1986 Regulations have been amended by the European Communities (Wildlife Act, 1976) (Amendment) Regulations 2017 (S.I. No.166 of 2017) (the “**2017 Regulations**”) which replaced the Second Schedule of the 1986 Regulations, as amended by the European Communities (Wildlife Act, 1976) (Amendment) Regulations 1997 (S.I. No.152 of 1997) (the “**1997 Regulations**”).
- 3.6. The activities listed in the Second Schedule now include (a) shooting with rifle or shotgun; (b) the taking, damaging or destruction of nests or eggs; (c) non-meat based poisoned or anaesthetic bait; (d) cage traps with or without live decoys and (e) traps, snares or nets approved under the Wildlife Act 1976 (Approved Traps, Snares and Nets) Regulations 1977 (S.I. No.307 of 1977) (the “**1977 Regulations**”) (as amended).
- 3.7. As I understand it, the Minister for Culture, Heritage and the Gaeltacht (the “**Minister**”), as the office then was, signed a State-wide Declaration for the twelve month period from 1 May 2020 to 30 April 2021. A separate countrywide Declaration was signed in respect of air safety.
- 3.8. The current State-wide Declaration which was signed on 21 May 2020 was made pursuant to the 1986 Regulations and revoked a previous Declaration dated 28 April 2020. Schedule 1 to the Declaration lists the species which are controlled, and which include the herring gull (*Larus Argentatus*), the greater black-backed gull (*Larus Marinus*) and the lesser black-backed gull (*Larus Fuscus*). Those three species are protected for the period from 1 May 2020 to 30 April 2021 but only within the area within the boundary map at Schedule 2 to the Declaration (which broadly covers the Balbriggan area). The stated reason is threat to public safety and the prescribed method of control is to take the nest or to take the eggs.

- 3.9. I think it is worth noting here that the Declaration is only limited to the three gull species listed in the Declaration and confined to the geographical area delineated in the map as well as the stipulated matter of control.
- 3.10. I should also emphasise that I have a particular concern that the prescribed form of the species control in the Declaration (which was made pursuant to the 1986 Regulations) is not compatible with the restrictive criteria in Article 9 of the Birds Directive for the following reasons.
- 3.11. First, while the cited reason of public safety is broadly compatible with the first indent in Article 9(1)(a) of the Birds Directive, Article 9 also provides that Member States may only derogate from the provisions of Articles 5 to 8 where there is no other satisfactory solution.
- 3.12. It does not appear to me from looking at the face of the Declaration that there is any evidence that the Minister has excluded the possibility that there may be an alternative satisfactory solution (although I should say that I have only looked at the Declaration which is publicly available and not any of the background materials).
- 3.13. Secondly, it is not immediately evident that the Declaration complies with the restrictions in Article 9(2) of the Birds Directive. While it does refer to the species which are subject to the derogation, it does not appear to specify (a) the conditions of risk and the circumstances of time and place under which such derogations may be granted or (b) 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; or (c) the controls which will be carried out.
- 3.14. Thirdly, the reference to 'threat' in the 1986 Regulations seems to be a higher threshold than Article 9(1) of the Birds Directive which refers to 'in the interests of public health and safety'.

- 3.15. I should note *ex abundanti cautela* that I have assumed that the gull species which are the subject of the Committee's Terms of Reference are protected under Annex II of the Birds Directive and are therefore subject to Article 5 and / or Article 7 of the Directive.
- 3.16. It seems to me that the national system for allowing derogations under Article 9 of the Birds Directive is through State-wide declarations made by the Minister pursuant to the Act.²¹ For the reasons outlined above, I have doubts that the provisions in s.22 of the Act and the 1986 Regulations are inconsistent with Article 9 of the Birds Directive. For a start, the Act is national legislation which preceded the original 1979 Birds Directive (Directive 79/409/EEC) and, while it has been amended since then, appears to be concerned with a domestic regime for wildlife protection (including wild birds).
- 3.17. This is fortified by the fact that Article 9 of the Birds Directive would appear to be transposed in any event by Reg.54 and Reg.55 of the 2011 Regulations and it would be otiose to include these provisions in the 2011 Regulations if the derogation regime had been adequately transposed in the Act and / or the 1986 Regulations.
- 3.18. Reg.55, which applies to derogation licences for birds, provides that any person may apply to the Minister for a derogation licence from complying with the requirements of the provisions of Reg.53.
- 3.19. Where there is no other satisfactory solution, the Minister may, following consultation with any other Minister or Ministers of the Government having relevant responsibilities or functions where appropriate, in respect of any species of naturally occurring bird in the wild state referred to in Article 1 of the Birds Directive, grant a derogation licence to one or more persons, where it is
- a) in the interests of public health and safety,
 - b) in the interests of air safety,
 - c) to prevent serious damage to crops, livestock, forests, fisheries or water,

²¹<https://www.npws.ie/legislation/irish-law/eu-birds-directive-derogations#:~:text=The%20Directive%20allows%20Member%20States,safety%20or%20to%20air%20safty.>

- d) for the protection of flora or fauna,
- e) for the purposes of research or teaching, of re-population, of re-introduction or for the breeding necessary for these purposes, or
- f) to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.

3.20. Any derogation licence which is granted must be subject to such conditions, restrictions, limitations or requirements as the Minister considers appropriate. Any conditions, restrictions, limitations or requirements to which a derogation licence is subject must be specified therein. Reg.55(6) also provides that the derogation licence granted must specify:

- a) the species which are subject to the derogation licence,
- b) the means, arrangements or methods authorized for capture or killing,
- c) the conditions of risk and the circumstances of time and place under which such derogation licence is 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, and
- e) the controls which will be carried out.

3.21. It seems to me that Reg.54 and Reg.55 of the 2011 Regulations are intended to be a transposition of Article 9 of the Birds Directive. Importantly, they also replicate the language from Article 9 and in particular the reference to ‘no other satisfactory solution’.

4. Position in the United Kingdom

- 4.1. I have also examined the situation in the UK. All species of gull are protected under the Wildlife and Countryside Act 1981 and the Wildlife (Northern Ireland) Order 1985. This makes it illegal to intentionally or, in the case of Scotland and Northern Ireland, recklessly injure or kill any gull or damage or destroy an active nest or its contents. In Scotland and Northern Ireland, it is also illegal to prevent birds from accessing their nest and, in Northern Ireland, it is illegal to disturb any nesting bird. In addition, the Mediterranean gull is protected under Schedule 1 of the Wildlife and Countryside Act 1981.
- 4.2. This makes it illegal to intentionally or recklessly disturb the birds at or close to their nest or to disturb their dependent young. However, in certain circumstances control measures may be necessary. Simple nuisance or minor damage to property are not legally sanctioned reasons to kill gulls. In the UK, licences can be issued which permit nests to be destroyed or even birds to be killed if there is no non-lethal solution and if it is done to prevent serious damage to agriculture, the spread of disease, to preserve public health and safety and air safety, or to conserve other wild birds.
- 4.3. These licences can be issued to individuals on a case-by-case basis or granted annually for use by an 'authorised person' (usually the landowner, occupier or someone authorised by them).
- 4.4. NE gull control through individual licences, which will need to be prioritised. Natural England will consider the strength of need in each licence application individually but generally protecting human life and health will be the overriding priority. Any control undertaken under other purposes such as preventing serious damage and conserving wild birds and flora or fauna will need to be targeted. NE changed its gull licensing regime in January 2020 to protect declining numbers of herring gulls and lesser black-backed gulls in England.²²

²² <https://www.gov.uk/government/news/changes-to-licensing-of-the-lethal-control-of-herring-gull-and-lesser-black-backed-gull>

<https://www.gov.uk/government/news/advice-on-how-to-deal-with-problem-seagulls>

5. Specific Issues to be Addressed

5.1. I now propose to address the specific issues that were furnished to me on 17 July 2020. The detailed note I was provided with includes 19 questions (with one question expressly for the Attorney General's Office). Some of the questions are over-lapping in nature. I propose to follow the numbering in the detailed note.

Question 1

5.2. While there is a general obligation in Article 2 of the Bird Directive which requires Member States shall take the requisite measures to maintain the population of the species 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, there is a derogation provision in Article 9 of the Directive. That derogation provision must be construed narrowly and in strict accordance with the criteria therein.

5.3. In my view, there must be a significant doubt that the derogation regime in the 1986 Regulations, which were made pursuant to the Act, conforms with Article 9 of the Birds Directive, in the absence of an express and systematic requirement to demonstrate that there is no other satisfactory solution for a proposed derogation and where the specific criteria in Article 9(2) are not complied with or not required to be complied with.

5.4. Given that reg.55 of the 2011 Regulations transposes Article 9 of the Birds Directive it seems to me that this is the appropriate procedure to follow when considering a derogation for a wild bird protected under the Birds Directive (which I understand gulls to be).

Question 2

5.5. There are a number of provisions in both the Act and the 2011 Regulations which allow the Minister and State agencies where there is a breach of the Birds Directive. For example, s.19 of the Act protects wild birds (with the exception of species in the Third Schedule). This is enforced pursuant to s.22 of the Act and any Regulations made thereto, generally by the NPWS on behalf of the Minister. Section 72 of the

Act sets out the powers of An Garda Síochána and other authorised persons for the purpose of enforcing the Act.

- 5.6. Reg.5 of the 2011 Regulations also sets out the functions of authorised officers for the purpose of enforcing those Regulations. An authorised officer may enter any such lands or premises and bring onto those lands or premises such other persons, including a member of An Garda Síochána, or equipment or materials, as he or she may consider necessary.
- 5.7. This may be done at all reasonable times or at any time if he or she has reasonable grounds for believing that there is or may be a risk to the conservation status of the natural habitats or species referred to in Article 2 of the Habitats Directive or Article 1 of the Birds Directive, or that an offence under the 2011 Regulations has been, is being or is about to be committed at any lands or premises, or that evidence of any such offence is to be found at any lands or premises.
- 5.8. An authorised officer must be appointed by the Minister or with the Minister's consent pursuant to reg.4 of the 2011 Regulations. It appears that only an authorised officer can enter onto private lands for the purpose of enforcing the 2011 Regulations.
- 5.9. The authorised officer must have reasonable grounds for believing that there is or *may be* a risk to the conservation status of the natural habitats or species referred to in Article 2 of the Habitats Directive or Birds Directive or that an offence has been, is being or is about to be committed at any lands or premises.
- 5.10. An authorised officer must comply with the certificate of appointment. If the authorised officer exceeds what is permitted by the certificate of appointment and the 2011 Regulations, there is potentially a breach of Art.40.5 of the Constitution which ensures the inviolability of the dwelling place: see *Damache v DPP* [2012] IESC 11.

- 5.11. An authorised officer may not enter into a private unless one of the following conditions applies— (a) the entry is effected with the consent of the occupier, or (b) the entry is authorised by a warrant issued under Regulation 6.
- 5.12. In terms of public and / or employer liability, I think the implications for the property owner will depend on the specific terms of the insurance policy and it is difficult to provide a definitive answer.

Question 3

- 5.13. An authorised officer is not personally liable in any civil or criminal proceedings for anything done in the purported exercise of his or her functions under the 2011 Regulations if the court is satisfied that the act was reasonable and was done in good faith.²³
- 5.14. Therefore, where an authorised officer is discharging his or her powers and functions and does so in a reasonable manner and in good faith, the authorised officer is not personally liable.
- 5.15. There may be an argument that the agency which employs the authorised officer should be deemed liable if damage is caused to a person's property. This is very much fact-dependent but I think that arguably the state agency could be immune from liability if it acted reasonably and was performing powers and functions under the 2011 Regulations in good faith.

Question 4

- 5.16. If an accident is caused to a person who is lawfully present on another person's property, the property owner could be sued under the Occupiers' Liability Act 1995 (the "**1995 Act**"). This requires the property owner to show a common duty of care to visitors to the premises.

²³ S.I. No.477 of 2011 reg.5(15).

- 5.17. This means a duty to take such care as is reasonable in all the circumstances (having regard to the care which a visitor may reasonably be expected to take for his or her own safety and, if the visitor is on the premises in the company of another person, the extent of the supervision and control the latter person may reasonably be expected to exercise over the visitor's activities) to ensure that a visitor to the premises does not suffer injury or damage by reason of any danger existing thereon.
- 5.18. Provided that the property owner has taken reasonable care to ensure the safety of visitors on his or her property and does not breach that duty, the property owner should generally be absolved from liability. This will of course depend on whether the harm suffered was reasonably foreseeable and whether the property owner could have taken steps to avoid it.

Question 5

- 5.19. In general, a property owner cannot refuse to implement gull control measures which are lawfully imposed by the Minister (under the Act) or public authority (under the 2011 Regulations).
- 5.20. Public authorities (which include local authorities) may require certain things to be done pursuant to art.27 of the 2011 Regulations in the interests of nature conservation.
- 5.21. The Minister may also issue a Direction pursuant to reg.28 of the 2011 Regulations where he or she has reason to believe that any activity, either individually or in combination with other activities, plans or projects, is of a type that may—
- a) have a significant effect on a European Site,
 - b) have an adverse effect on the integrity of a European Site,
 - c) cause the deterioration of natural habitats or the habitats of species or the disturbance of the species for which the European Site may be or has been designated pursuant to the Habitats Directive or has been classified pursuant to the Birds Directive, insofar as such disturbance could be significant in relation to the objectives of the Habitats Directive,

- d) cause pollution or deterioration of habitats within the meaning of the second sentence of Article 4(4) of the Birds Directive, or
- e) have an adverse effect on the conservation status of (inter alia) naturally occurring birds in the wild state,

5.22. Where he or she considers appropriate, the Minister must issue a notice and direct that the activity shall not be carried out, caused or permitted to be carried out or continue to be carried out by any person in the European Site or at any other specified land or may restrict or regulate the activity in the European Site. The notice must be accompanied by a statement of the Minister's reasons for making the decision. A person who contravenes a Direction given pursuant to paragraph is guilty of an offence.²⁴

5.23. Reg.53(4) of the Regulations also controls the hunting, capture or killing of birds and provides that a person shall not use any means, arrangements or methods for the large scale or non-selective capture or killing of birds, or that are capable of causing the local disappearance of any species of bird. A person who contravenes this provision is guilty of an offence.

Question 6

5.24. It is difficult to answer this question with precision as it is quite general in nature. Local authorities have powers of prosecution under the Waste Management Act 1996 (the "**1996 Act**") for any offence under the 1996 Act (including any breach of Regulations made pursuant to the 1996 Act.

5.25. Section 32 of the 1996 Act also provides that a person shall not— (a) cause or facilitate the abandonment, dumping or unauthorised management or treatment of waste, or (b) hold, transport, recover or dispose of waste, or treat waste, in a manner that causes or is likely to cause environmental pollution.

5.26. In principle, a local authority could bring a prosecution if unauthorised disposal of waste caused or is likely to cause environmental pollution. This is defined in s.5 of the Act as follows:

²⁴ S.I. No.477 of 2011 reg.28(4).

“environmental pollution” means, in relation to waste, the holding, transport, recovery or disposal of waste in a manner which would endanger human health or harm the environment, and in particular— (a) create a risk to waters, the atmosphere, land, soil, plants or animals, (b) create a nuisance through noise, odours or litter, or (c) adversely affect the countryside or places of special interest”

5.27. In my view, this is directed more at unlawful pollution of the environment more generally caused by the unlawful recovery or treatment of waste as opposed to directly feeding a gull with waste. However, if a feeding habitat of gulls was polluted as a result of unauthorised waste activity, this could potentially give rise to a breach of the 1996 Act which is capable of being prosecuted.

Question 7

5.28. In relation to question 7, it is doubtful whether a city wide or country wide gull control program would be legal under the EU Birds Directive if the national population numbers of Herring Gull and Black-backed gulls are not known.

5.29. While Article 9 of the Birds Directive allows Member States to derogate from Articles 5 to 8 of the Directive, there is a general exhortation in the Directive that Member States must take the requisite measures to maintain the population of the species 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.

5.30. If there is uncertainty over the numbers or population of the species, it is difficult to see how a derogation could be applied and still ensure that the overall objective(s) of the Birds Directive would be met.

Question 8

5.31. In relation to question 8, an individual should only remove the seagull nest if permitted to do so under licence or derogation. The question of whether people who are impacted by constant sleep disruption from constant environmental (seagull) noise should ask their GP to certify them as being unfit for work is really a matter for their employer/employment contract.

Question 9

- 5.32. Question 9 is somewhat of a rhetorical question and / or a question of policy.
- 5.33. In terms of the Birds Directive, there is a derogation option in the interests of public health and safety. I am not aware of any specific authority where this particular phrase has been interpreted to mean that one has to demonstrate an impact on both public health and safety or public health only.
- 5.34. It is also not clear from the Directive whether the impact on public health and safety may be temporary or must be extended over a period of time and how profound the impact must be. Presumably the reference to public means there must be an impact on a significant cohort of people.
- 5.35. While ultimately it is a question for the Minister to determine whether the threshold has been met, I note that in the documentary materials there is evidence of antimicrobial resistance (“AMR”) and zoonosis which may meet the threshold required in Article 9 of the Birds Directive.

Question 10

- 5.36. Question 10 relates to separate two separate issues: the prospect of being charged for careless or dangerous driving under the Roads Acts and the question of whether the lack of sleep is caused by gull activity which can be curtailed under the Birds Directive.
- 5.37. I do not propose to deal with any specific defences under the Road Traffic Acts as the question is somewhat general in nature nor is it necessary to comment on the specific facts in the media articles.
- 5.38. If there is objective evidence that gull activity is having a detrimental effect on people’s sleep patterns such as to potentially cause endangerment on public roads, this may well support an argument for a derogation under the public health and safety derogation in Article 9 of the Birds Directive (subject to there being no reasonable alternative).

Question 11

5.39. I would need further clarification on question 11 to address this.

Question 12

5.40. In my view, Article 9 of the Birds Directive is broadly transposed by regs.54 and 55 of the 2011 Regulations but the manner in which State-wide Declarations are made pursuant to the 1986 Regulations would not appear to be compatible with the Birds Directive (I have addressed this in detail above).

Question 13

5.41. In my view regs.54 and 55 of the 2011 Regulations transpose faithfully Article 9 of the Birds Directive but would have to be construed in light of CJEU jurisprudence on the Birds Directive. EU law requires that the essential elements of Article 9 are transposed completely, clearly and unequivocally into the national rules. This is necessary to ensure that the derogations are applied in a strictly controlled and selective manner.²⁵

5.42. Article 9 of the Birds Directive should also be construed with Articles 2 and 5 of the Directive. Article 2 of the Directive does not appear to be transposed in terms but is replicated in Reg.29 of the 2011 Regulations (Ministerial Directions) and Reg.39 of the 2011 Regulations (Threat Response Plans). Article 5 of the Directive is broadly transposed by Reg.53 of the 2011 Regulations.

5.43. Insofar as derogations are granted pursuant to the Act and the 1986 Regulations, this would not appear to meet the stringent requirements of Article 9 of the Birds Directive.

²⁵ *Commission of the European Communities v Italy* (C-262/85) [1987] E.C.R. I-03073; *Associazione Italiana per il World Wildlife Fund, Ente Nazionale per la Protezione Animali, Lega per l'Ambiente - Comitato Regionale, Lega Anti Vivisezione - Delegazione Regionale, Lega per l'Abolizione della Caccia, Federnatura Veneto and Italia Nostra - Sezione di Venezia v Regione Veneto* (C-118/94) [1996] E.C.R. I-01223.

Question 14

- 5.44. Although the provisions of Article 9 allow a fair degree of derogation from the general protective rules, they must nevertheless be applied precisely and specifically, in order to meet clearly defined conditions and specific situations.
- 5.45. In my view, Article 9 of the Birds Directive does not allow for a broad general derogation from the Directive but requires that each of the criteria therein are satisfied. I do not think the derogation can be open-ended.
- 5.46. This seems implicit from Article 9(2) of the Birds Directive which requires the derogation to specify (a) the conditions of risk and the circumstances of time and place under which such derogations may be granted; (b) 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; (c) the controls which will be carried out.
- 5.47. Reg.9 of the 2011 Regulations also requires the Minister to undertake surveillance and monitoring of the conservation status of the habitats and species referred to in Article 1 of the Birds Directive and to identify threats to bird species referred to in Article 1 of the Birds Directive, for the purpose of developing such measures as he or she considers necessary including, where appropriate, threat response plans.²⁶
- 5.48. This surveillance exercise informs the steps to control the taking of flora and fauna pursuant to Reg.53 of the 2011 Regulations and suggests that any derogation could be subject to review, in light of ongoing surveillance of species numbers to ensure that the general aims and objectives of the Birds Directive are met.

²⁶ S.I. No.477 of 2011 reg.9(5)-(6).

Question 15

5.49. Subject to further instructions, I understand that the concern of Birdwatch Ireland is that, while they view the case-by-case approach adopted in the UK as being positive, NE have not established that the threat to human health or safety is real, quantified and significant, and are concerned with the absence of the requirement to prove that there is 'no other satisfactory solution' as specified in Article 9(1).

5.50. Insofar as the NE regime does not require conclusive evidence that there is no other satisfactory solution, then it is arguably not compliant with Article 9 of the Birds Directive. However, I should emphasise that this is a general view and I would need to review the licensing regime in the UK in more detail as well as specific licensing applications.

Questions 16 to 18

5.51. Questions 16 to 18 do not appear to be directly relevant to the Birds Directive and concern issues of liability under the Road Traffic Acts.

5.52. The threshold for careless driving in s.52 of the Road Traffic Act 1961, as amended (the "**1961 Act**") is that a person shall not drive a vehicle in a public place without due care and attention.

5.53. Section 53 of the 1961 Act provides that a person shall not drive a vehicle in a public place in a manner (including speed) which having regard to all the circumstances of the case (including the condition of the vehicle, the nature, condition and use of the place and the amount of traffic which then actually is or might reasonably be expected then to be in it) is or is likely to be dangerous to the public.

5.54. If an accident is caused directly due to the impact of a gull or because of sleep deprivation, that may constitute grounds of a defence that the causal factor was due to circumstances beyond the driver's control. However, again the specific issues could only be properly addressed in a practical scenario.

6. Conclusion

- 6.1. In conclusion, I am of the view that the derogation regime in the 1986 Regulations, which was used to make the Declaration for the Balbriggan area, is not in conformity with Article 9 of the Birds Directive.
- 6.2. However, reg.55 of the 2011 Regulations does give effect to Article 9 of the Birds Directive and prescribes the criteria to be applied. When considering a derogation, any criteria must be applied restrictively.
- 6.3. Article 9 expressly refers to public health and safety as a derogation criterion and would appear in principle to allow for a derogation to address the concerns articulated at the Committee in light of the evidence of AMR and zoonosis as well as more anecdotal evidence.
- 6.4. However, it must be construed restrictively and in its totality and must specify the particular criteria in Article 9(2) of the Birds Directive.

Dr. David Browne BL

11 August 2020

Nesting Gulls Populations in Balbriggan, Skerries and Howth, Co Dublin

Final Report | December 2018



Comhairle Contae Fhine Gall
Fingal County Council



Nesting Gulls Populations in Balbriggan, Skerries and Howth, Co. Dublin

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EXECUTIVE SUMMARY

In recent years there have been an increasing number of reports and complaints from local residents in the coastal towns of Balbriggan, Skerries and Howth in relation to gulls nesting on the roofs of businesses and private houses. Fingal County Council decided to investigate these reports and commissioned Roughan & O'Donovan to undertake an assessment of the roof-nesting gulls in the three coastal towns and to establish the best methods for identifying and counting nests and the number of breeding gulls present.

The Project reviewed existing methodologies for counting urban breeding gulls in order to determine the best methods for assessing the number of roof-nesting gulls in the towns of Balbriggan, Skerries and Howth. Following this review, it was determined that the best methods for establishing roof-nesting gull numbers was combined approach using; 1) a public appeal for information via a press release and social media, 2) personal observations from walking surveys in each of the towns, and 3) the filming of roofs using un-manned aerial methods, a drone, with a high definition camera.

In May 2018 an article and appeal for information about roof-nesting gulls was placed in a number of local newspapers in the north Dublin and Fingal County areas. Responses to this appeal identified the areas of each town where the gull nests appeared to be most concentrated and assisted with identifying which areas of each town should be further covered by the drone surveys.

Walkover surveys provided the opportunity to meet local residents with knowledge of high-density roof-nesting gulls and which areas should receive further survey. However, it was difficult to observe nests from the ground as many were either on opposite sides of roofs or were obscured by chimney stacks and therefore only a limited amount of time was spent on walkover surveys in each of the three towns.

Drones surveys were conducted by filming selected areas of each of the three towns with known high roof-nest densities over a five-day period; 2 days in Balbriggan and 1.5 days in each of Skerries and Howth. The drone pilot was a fully licenced pilot authorised and acquired the necessary permissions from the Irish Aviation Authority to fly a drone fitted high-definition camera and stabiliser over the high-density populated areas. Drone surveys were undertaken either from roof-top vantage points or from open areas adjacent to built-up areas. Filming from high vantage points allowed for filming of more extensive areas.

While initial objectives were to establish a count of all of the roof-top gull nests in each of the three seaside towns a number of project constraints meant this was not possible:

- The 2018 derogation permitted people in Balbriggan to remove eggs and nests from their properties meant that it was possible to determine how many eggs and nests were removed prior to the project surveys.
- Drone airtime was limited by the time and expense of covering all the roofs in each of the three towns.
- There were certain businesses in the industrial estate in Balbriggan for which permission to fly over with the drone was not granted.
- Personal observations by the project ecologist noted many nests partially hidden under roof-top infrastructure such as air conditioner equipment which could not have been identified using a drone alone and therefore all accessible roof tops would have to be surveyed to produce a total count.

- The time and financial commitment required to cover all possible nesting sites using either or all the counting methodologies, and which covered all of the three seaside towns, would be prohibitive.
- Such is the density and narrow streets of many of the houses in the centre of Skerries, it was not possible to film much of this area in the allotted time.

Responses from the press release and media appeal included 19 email responses from residents living in Balbriggan, 21 from Skerries and 29 from Howth. While the number of responses received was smaller than expected they did help to identify the high roof-nesting area within each town and which should be covered using the drone surveys. Responses identified 19 known nest sites in Balbriggan, 17 in Skerries and 35 in Howth.

The walkover surveys revealed few additional nests not otherwise noted from either the media appeal or the drone surveys although 12 nests were identified in Balbriggan, along with a report from local communities that 15 nests had recently been removed from private roofs, no additional nests were observed in Skerries and 3 nests were identified in Howth.

The drone surveys revealed 186 roof-nests in limited areas of Balbriggan, 55 in Skerries and 109 in Howth.

Combining the three survey methodologies a total of 232 nests were identified in the limited areas of Balbriggan, 72 in Skerries and 147 in Howth. A total of 451 gull nests were identified during the entire survey. Apart from three positively identified Black-backed gull (*Larus marinus*) nests in Balbriggan, all the nests were identified as Herring Gulls (*Larus argentatus*).

Of the three survey methodologies used, the use of drones to film active roof-top nests proved the most effective method. However, should total counts within a town be required, the time taken to conduct extensive drone surveys and that required for the video review and assessment may require considerable financial resources.

1. INTRODUCTION

1.1 Background to the Project

In recent years there have been an increasing number of reports and complaints from local residents in the coastal towns of Balbriggan, Skerries and Howth in relation to gulls nesting on the roofs of businesses and private houses.

While it is not the position or responsibility of the Council to deal with the problems created by gull species, the Council has decided to investigate and establish the number and extent of breeding gulls in the three coastal towns, particularly those nesting on dwellings and industrial buildings.

Roughan & O'Donovan was commissioned by Fingal County Council to undertake an assessment of the roof-nesting gulls in the three coastal towns and to establish the best methods for identifying and counting nests and the number of breeding gulls present.

1.2 Brief Outline of the Gull Issue in Fingal County

Much of the information on the gull nuisance problems in Fingal County comes from a report prepared by a group of Balbriggan residents, the Community in Balbriggan (CiB), which describes and highlights some of the negative impacts on the community from expanding urban gull colonies, impacts which they describe as “*causing escalating, uncivilised, dangerous, and unacceptable living conditions*” (the Balbriggan Community Report (December 2017)).

In order to highlight the extent of the gull problem the CiB conducted a roof nest count in the summer of 2016 which covered eight estates, and residential and commercial parts of the Balbriggan town centre, and a number of local businesses and institutions. This count revealed a total of 99 nests containing 254 eggs. The CiB used these numbers as an indicator of the scale of the urban problem when they were compared with figures of 209 nesting pairs of herring gulls recorded on rooftops in the Republic of Ireland obtained during the Seabird 2000 census conducted by BirdWatch Ireland (BWI), a census which indicated that Herring Gulls (*Larus argentatus*) numbers had diminished by 90% in the last 40 years.

The CiB used their roof nest data, along with hundreds of petitions from local residents, to lobby their local Councillors and TDs along with the Minister and Secretary General at the Department of Culture, Heritage and an Gaeltacht (DCHaG) to provide a solution to the gull problem on behalf of the residents of Balbriggan. In April 2017 the Minister at the DCHaG signed a one-year pilot derogation to the Regulation 3(1)(A) of the European Communities (Wildlife Act 1976) (Amendment) Regulations 1986 (SI No. 254 of 1986) which then included Herring Gull, Greater Black-backed Gull (*Larus marinus*) and Lesser Black-backed Gull (*Larus fuscus*) under Schedule 1 thus permitting the removal of nests and eggs from the roofs of houses and businesses during the period 1st May 2017 to 30th April 2018 in a zoned area of Balbriggan and its districts only (see Appendix A).

This derogation has also been signed for the period 1st May 2018 to 30th April 2019 which again only permits residents within the zoned area of Balbriggan to remove nests and eggs, however, this derogation does not permit the residents of Skerries or Howth to do the same.

In order to better understand the extent of the roof-nesting gull population in Skerries and Howth, as well as in Balbriggan, Fingal County Council commissioned a count of

nests in these areas and an investigation into the best method for counting roof nests. Without the ability to understand the extent of the issue it is difficult to develop a management strategy which will address the issue.

1.3 Project Sites

Balbriggan, Skerries and Howth are typical seaside towns on the east coast of Ireland, each of which possess a harbour and supports a fishing industry (Figure 1).

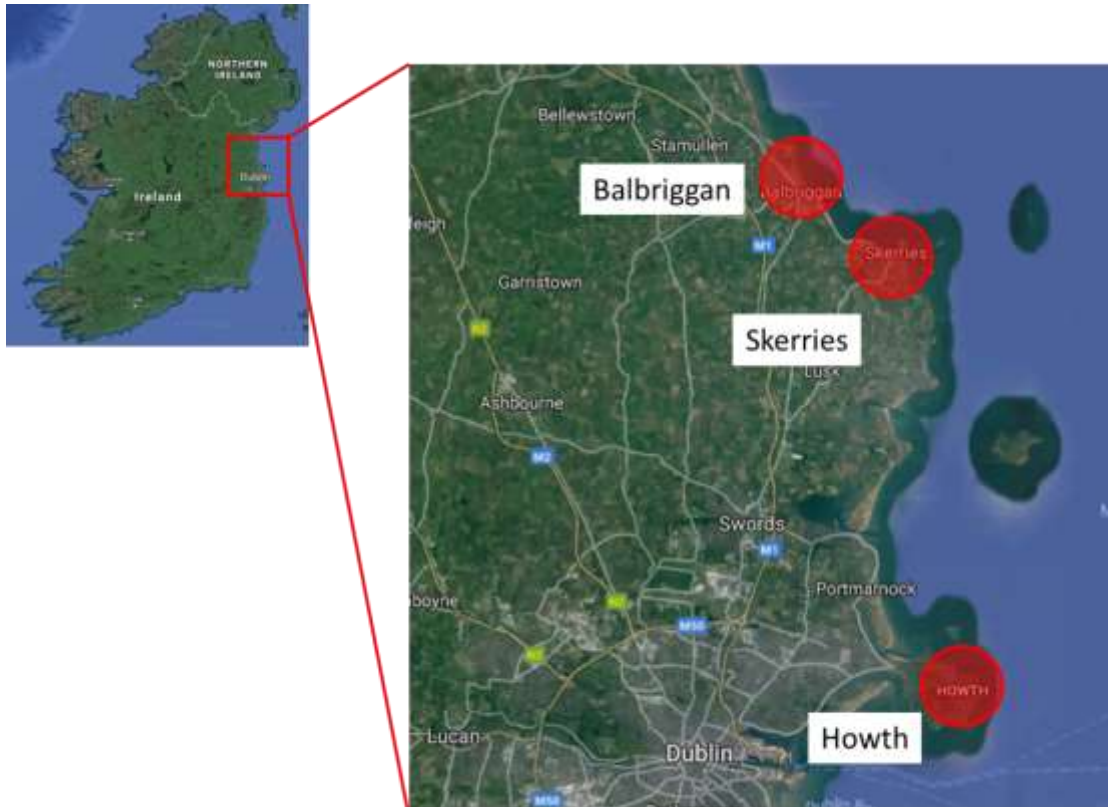


Figure 1 Location of Balbriggan, Skerries and Howth on the east of Ireland

2. ROOF-NEST COUNTING METHODOLOGY

2.1 Existing Methodologies for Counting Gulls

There have been a number of methods used to estimate gull numbers in both rural and urban environments of which the most recent has been a report prepared for the British Trust for Ornithology (Ross *et al.*, April 2016) which conducted a review of methods and options for the survey design of urban breeding gulls in order to make recommendations for the most cost-effective survey strategy for delivering urban gull population estimates for the UK and Republic of Ireland.

This report focused methods for counting adult and juvenile birds and reviewed existing methods including vantage point surveys, sample quadrat counts, quadrat counts, flush counts, and aerial methods such as digital aerial surveys, visual aerial surveys and un-manned aerial methods. The report concluded that sample quadrat counts, quadrat counts, flush counts were only really suitable for counting gulls in countryside habitats and cliff nesting colonies.

Recommendations from this report are that in built-up, urban habitats initial assessments are best achieved using digital aerial surveys, using vantage point surveys on a broad scale; and then the most cost-effective approach is to use methods such as visual aerial survey, cherry pickers or vantage point surveys, especially where these have proven successful before, utilising volunteer or public involvement where appropriate. Un-manned aerial methods, drone surveys, were subject to and in some cases limited by air-space restrictions imposed by the Civil Aviation Authorities in the UK.

2.2 Methodologies Used for Current Roof-nesting Gull Survey

ROD Senior Ecologist, Michael Bailey, adopted three methods for establishing the number and extent of roof-nesting gulls in each of the three seaside towns, Balbriggan, Skerries and Howth. These were: 1) a public appeal for information via a press release and social media, 2) personal observations from walking surveys in each of the towns, and 3) the filming of roofs using un-manned aerial methods, a drone, with a high definition camera.

These three methodologies are described further below.

2.2.1 Press release and appeal for information from the residents of the three seaside towns

In May 2018 an article and appeal for information about roof-nesting gulls was placed in a number of local newspapers in the north Dublin and Fingal County areas (see Appendix B). People were invited to email ROD with records and observations and this information was used to pin-point the areas of each town which had the highest number of roof nesting gulls.

2.2.2 Walking Surveys of Balbriggan, Skerries and Howth

From the responses to the media appeal it was possible to identify and communicate with residents in Balbriggan and Howth who had a particular interest in roof-nesting gulls and who led campaigns to alert the local and national authorities of the impact of urban gull numbers on the local communities. Each of these people was willing to escort the ROD ecologist around the towns and point out some of the major 'problem' areas in their town. There was no-one from Skerries who fulfilled this role.

One day was spent with each of the community leaders in Balbriggan and Howth and one additional day was spent by the ROD ecologist walking around the Balbriggan town centre and neighbouring streets both looking for gull nests and also looking for suitable vantage positions from which to conduct the drone survey.

Similarly, one day was spent in each of Skerries and Howth also looking to confirm some of the reports of high gull nest densities as reported by the local residents in response to the media appeal, to record any visible gull nests and also look for suitable drone survey vantage points.

2.2.3 Filming of roof tops using a drone

The filming of selected areas of each of the three seaside towns with known high roof-nest densities was undertaken over a five-day period; 2 days in Balbriggan and 1.5 days in each of Skerries and Howth. The total areas of each town covered by drone filming is shown in Appendix D.

The drones used during the filming were 1) the *Yuneec H520* and 2) the *DJI Phantom 4 Pro+*, both fitted with a high-definition camera and stabiliser (Figure 2.1). Most of the filming was done using the *Phantom 4 Pro+* as this drone had better battery life and greater range than the *Yuneec H520*. Also, it was not known how the gulls would react to the presence of the drone. Other similar studies have shown that the bright colour of the *Yuneec H520* prevented birds from getting too close to or attacking the drone.

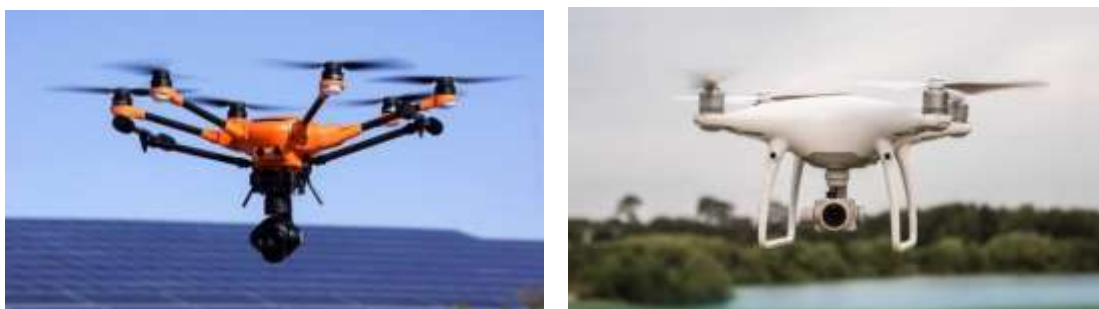


Figure 2.1 *Yuneec H520* and *DJI Phantom 4 Pro+* drones, similar to those used to film rooftops and record gull nests in the three seaside towns

The drone pilot was a fully licenced pilot authorised and acquired the necessary permissions from the Irish Aviation Authority to fly over high-density populated areas such as the three seaside towns (see Appendix C).

The best vantage point from which to conduct filming by drone was usually from an elevated position. At no point could the drone pilot lose sight of the drone while in flight as this would be in breach of the Irish Aviation Authority licence conditions.

Much of the old business centre of Balbriggan was filmed from the roof of the Bracken Court Hotel which allowed for an uninterrupted visual flight of up to 500m in any direction (Plate 2.1). The Chieftain's Way area of Balbriggan in the north-west of the town was filmed from the roof of the Castlemill shopping Centre, access to which was granted by the Manager of the Dunnes Stores shop in the building.



Plate 2.1 Drone filming from roof of the Bracken Court Hotel

Much of the Fancourt and Hampton estates in the south-east of Balbriggan was filmed from the ground and therefore had to be done in several sections (two to three streets at a time) in order to maintain visual contact with the drone.

Permission was granted by the management of the Wavin pipe-manufacturing company in the south of Balbriggan to film from the roof of one of its warehouses. This elevated position allowed the drone pilot to cover the entire production plant including the tall silos on site, as well as the adjacent schools, Ardgillan Community College and the Bracken Educate Together School.

All filming over schools was conducted during school holidays or during weekends to avoid disturbing or causing any intrusion on school children in classes or outside.

The fact that much of the town of Howth closest to the sea is situated on a steep slope allowed for much of the Evora, Grace O'Malley and Balkill estates to be easily filmed from ground level.

Skerries possess few high-rise buildings or elevated land overlooking the town from which to gain elevated filming locations, so almost all the filming in this town was conducted from open playing fields and amenity areas adjacent to built-up areas of the town.

2.3 Project Constraints

Initially the objective of Fingal County Council was to produce a count of all of the roof-top gull nests in each of the three seaside towns, Balbriggan, Skerries and Howth. However, there were a number of project constraints which meant that a total count of all roof-top breeding gulls was not possible;

- The 2018 derogation to the Regulation 3(1)(A) of the European Communities (Wildlife Act 1976) (Amendment) Regulations 1986 (SI No. 254 of 1986) – as this derogation permitted people living in a designated zone of Balbriggan to remove eggs and nests from the roof of their properties it was not going to be possible to determine how many eggs and nests were removed and the impact this had on the number of nests in Balbriggan.

- Drone airtime – while drone flights over roof-tops provided a detailed survey of areas covered, the time and expense of covering all the roofs in each of the three towns was far beyond the budget provided for this initial survey.
- There were certain businesses in the industrial estate in Balbriggan for which permission to fly over with the drone was not granted.
- Personal observations by the project ecologist noted many nests partially hidden under roof-top infrastructure such as air conditioner equipment which could not have been identified using a drone alone and therefore all accessible roof tops would have to be surveyed to produce a total count.
- The time and financial commitment required to cover all possible nesting sites using either or all the counting methodologies, and which covered all of the three seaside towns, would be prohibitive.
- Such is the density and narrow streets of many of the houses in the centre of Skerries, it was not possible to film much of this area in the allotted time.

3. ROOF-TOP GULL NEST COUNT RESULTS

3.1 Press Release and Social Media Appeal

ROD received 19 email responses from residents living in Balbriggan, 21 from Skerries and 29 from Howth. Many of the responses pointed to specific locations where gulls are breeding on local residential roofs or on other neighbours' roofs within each of the three towns. Some of the responses provided the specific house number where nests were located but other respondents only provided information on the street in which they lived. Where no house numbers were provided the number of nests recorded along a particular street were recorded and are presented in the summary tables below.

Some of the emails did not give specific details about the location of gull nests but instead just complained about gull behaviour within the towns and their nuisance value, especially when chicks were present during the summer breeding months.

While the number of responses received was smaller than expected they did help to identify the areas of each town where the gull nests appeared to be most concentrated and this assisted with identifying which areas of each town should be further covered by the drone surveys.

3.1.1 Balbriggan

In Balbriggan most of the responses came from the Fancourt/Hampton area in the south-east corner of Balbriggan indicating that this area has some of the highest densities of roof-nesting gulls (Table 3.1). This area was included in the drone survey, see Section 3.3 below.

Table 3.1 Summary of reported nest sites in Balbriggan from public responses

Date	Location	Nests
30 th April	Ashfield Rise, Tankardstown	6
"	Derham Park	1
"	157 Hampton Cove	1
"	O'Dwyer's GAA and Fancourt	1
2 nd May	14 Hampton Square	1
4 th May	Bath Road, Lambeechers	1
8 th May	100 Hampton Cove	1
14 th May	Balbriggan Garda Station	1
16 th May	73 Hampton Cove	1
20 th May	30 Ashfield Green	1
8 th June	69 Fancourt Heights	1
24 th June	32 Hamlet Avenue Chieftains Way	1
	4 Chieftains Lane	1
8 th August	2 Breamore Cottages	1
	Total Gull Nests Reported	19

3.1.2 Skerries

Reports of roof-nesting gulls in Skerries were predominantly from the centre of the old town, the Churchfield Estates to the south and the Rock Estate and areas around the Skerries Community College, as shown in the summary table below (Table 3.2).

Table 3.2 Summary of reported nest sites in Skerries from public responses

Date	Address / Area	Nests
1 st May	7 Shenick Ave	1
"	21 Churchfield Close	1
24 th May	Seacrest Estate	1
"	Tennis Court Lane	2
"	Shenick Orchard, Holmpatrick	1
"	19 Churchfield Close	1
"	52 Mourne View	1
6 th June	Balbriggan Street	1
7 th June	Scoil Réalt na Mara, Príomh-Oide	1
25 th June	The Cross	1
26 th June	15 The Cross	1
27 th June	Kellys Bay	1
29 th June	12 Ballygossan Park	1
9 th July	2 Pump Lane, Hoar Rock	1
27 th July	5 The Park	1
13 th August	The Square	1
Total Gull Nests Reported		17

3.1.3 Howth

Howth provided most of the responses to the media appeal with a majority of the responses coming from the Evora, Grace O'Malley and Balkill areas of the town which are between 200 & 700m from the harbour and the fishing boats. There were also several reports from the Thormanby estates which were slightly further south from the sea (>1 km). Consequently, most of the drone survey focused on the Evora, Grace O'Malley and Balkill areas, see Table 3.3 and Section 3.3 below.

Table 3.3 Summary of reported nest sites in Howth from public responses

Date	Address / Area	Nests
30 th April	41 Grace O'Malley Drive, Howth	1
"	22 Harbour View, Howth	1
"	6 Asgard Road & along Asgard Road	5
1 st May	Carrickbrack Rd, Sutton	1
"	49 Main Street	2
"	60 Balkill Park	1
"	3 St. Marys Place	2
3 rd May	37 Thormanby Lawns	2
4 th May	2,3,5,6, 7 & 17 Evora Park	7

Date	Address / Area	Nests
"	4 & 6 Evora Park	2
"	2 Harbour View	1
"	next to Garda Station	1
"	Kish, Upper Cliff Road	1
8 th May	Graystroke, Nashville Road	1
19 th May	Arenal, Thormanby Road	1
"	1 Thormanby Lawns	1
16 th June	60 – 68,69 Thormanby Lawns	5
Total Gull Nests Reported		35

3.2 Walking Survey Observations

In one of the day visits to Balbriggan (Tuesday 8th May) the ROD ecologist was escorted around the centre of the town and around the Hampton estate by members of CiB. During this time CiB further explained the extent of the nesting gull issue and pointed out some of the typical nests on roofs of houses in the Hampton Estate area and the breeding gull behaviour exhibited around recently hatched chicks. The ROD ecologist was also introduced to the Principal of the Balbriggan Community College to discuss gulls and their impact on students, and shown other businesses in Balbriggan Town centre with gull nests on their roofs.

During the walking surveys it was easy to observe large numbers of gulls, in particular Herring Gulls, on many of the rooftops of the business buildings and houses in Balbriggan, Skerries and Howth, but due to the height of the buildings and the narrowness of many of the streets, it was almost impossible to observe the roofs and chimney stacks to confirm if any nests were present. Walking the street was also a very slow process and only small areas of each of the towns were covered in the during the walking surveys.

Any gull nests observed during the walking survey are shown in Table 3.4. This table only lists those nests observed during the walked survey which were not reported in either the media appeal study or observed during the drone flights. However, it does include nests observed on roof-top used as vantage points during the drone survey, and other anecdotal reports and observations of gull nests in the three towns and the observation from the CiB that 15 nests were known to have been recently removed from some of the houses in the Hampton Cove estate by the local residents.

Table 3.4 Nests observed during walking survey and other observations

Date	Address/Area	Observations	Nests
Balbriggan			
25 th June	Spicers Mill, Drogheda Street	Apartment building next to Supervalu. Nests behind roof infrastructure, three with three eggs each	4
10 th July	Brecken Court Hotel, Dublin Street	Nests observed behind air conditioning equipment and pipes on the roof	6
10 th August	Breamore Castle, Drogheda Street to the north of the town centre	Two nests on the ground at the bottom of a wall forming the courtyard of Breamore Castle. Pointed out by workers renovating the castle. Area fenced off so no predators.	2

Date	Address/Area	Observations	Nests
September 2018	Hampton Cove Estate	A member of CiB confirmed that 15 nests had been removed from houses in this estate	15
Total Gull Nests Observed			27
Skerries			
-	-	-	
Total Gull Nests Observed			0
Howth			
9 th May	26 Thormanby Lawns	Nest on gently sloping roof beside a plastic gull deterrent owl!	1
"	54 St Peter's Terrace	Beside chimney stack on roof of un-occupied cottage	1
"	62 St Peter's Terrace	Beside chimney stack of single-story cottage	1
Total Gull Nests Observed			3

3.3 Drone Survey Analysis and Results

The output from the drone survey was presented to ROD for analysis as Quick Time Movie (.MOV) video files which were viewed using Windows Media Player.

There were 46 video files covering selected areas of each of the three towns, 22 files for Balbriggan, including the Wavin Plant, 16 files for Skerries and 8 for of Howth.

Analysis of the movie files was conducted by viewing each of the individual movie files and after identifying each area on a map generated from Google Maps, the path of the drone flight and all of the nests observed in the videos were recorded and labelled on the representative map. An example of the output from the video analysis is shown in the figure below (Figure 3.1).

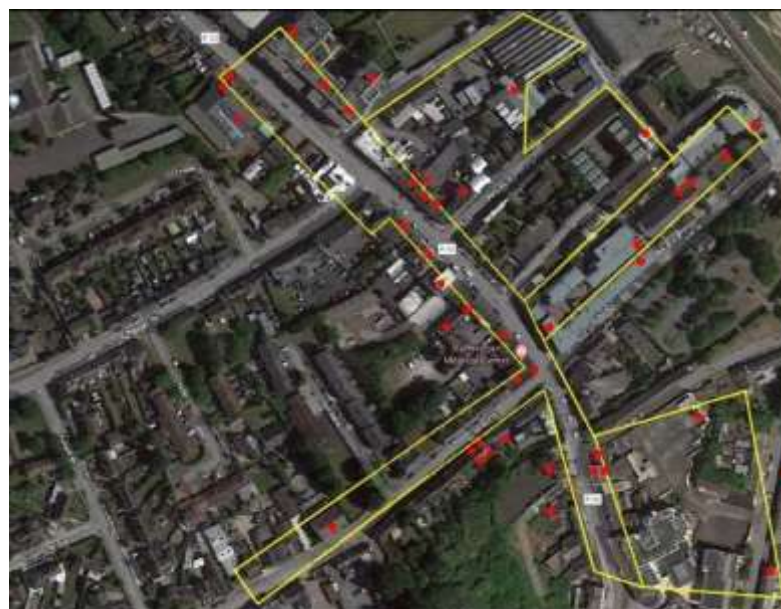


Figure 3.1 Output from the drone footage illustrating the drone path (yellow lines) and gull nests identified (red dots) in an area of the centre of Balbriggan Town

Some of the video footage from 2 or 3 movie files covering adjacent areas was sometimes combined on single maps so that all the results from the drone survey for

Balbriggan are represented on eleven maps, Skerries on seven maps and Howth on five maps. All of these maps are presented in Appendix D.

Also using Google Maps it was also possible to determine the address and/or name of each building upon which each of the gull nests was observed. A spreadsheet was prepared for each of the areas of the towns analysed, divided up into similar areas as the drone flight plan maps, which listed each of the houses or buildings on which one or more gull nests were observed. Additional information such as the position of the nest on a particular house is also presented where available. These spreadsheets are presented in Appendix E.

A summary of the gull nests observed in each of the three towns using the drone is presented in Table 3.5 below.

Table 3.5 Summary of the gull nests observed during the drone surveys for each of the three towns.

Area	Nest #s
Balbriggan	
Balbriggan 1 - Commercial Centre	52
Balbriggan 2 - Dublin Road	6
Balbriggan 3 - Hampton Street	8
Balbriggan 4 - Fancourt/Hampton Cove Area	21
Balbriggan 5 - Castlemill Complex/Flemington Community Centre	12
Balbriggan 6 - Dun Saithne/Newhaven Bay	6
Balbriggan 7 - Bremore/Brackenwood	5
Balbriggan 8 - Westbrook	2
Balbriggan 9 - Moylaragh	2
Balbriggan 10 - WAVIN Plant	51
Balbriggan 11 - Ardgillan Community College/ Bracken Educate Together	21
Total	186
Skerries	
Skerries 1 - Skerries Community College/Seacrest/Townparks	7
Skerries 2 - Shenick Road/Avenue/Grove	29
Skerries 3 - Millhill	0
Skerries 4 - Mourne View	12
Skerries 5 - The Vale/Rise/Way, Townparks	7
Skerries 6 - Mourne Drive/Crescent/Park	0
Total	55
Howth	
Howth 1 - Evora Park/Grace O'Malley Road	51
Howth 2 - Balkill Park	29
Howth 3 - Grace O'Malley Drive	26
Howth 4 - Balkill Road (north)	1
Howth 5 - Balkill Road (south)	2
Total	109

3.4 Summary of Gull Nest Counts from All Surveys

Table 3.6 provides a summary of all the nests identified, observed or reported by the local residents during this gull nest counting project using the three methodologies in each of the three towns, as described above.

Table 3.6 Summary of gull nests counted during the project in the three towns

Counting Method	Nest #s
Balbriggan	
Press release and media appeal	19
Walking Survey and other observations	27
Drone Surveys	186
Balbriggan Total	232
Skerries	
Press release and media appeal	17
Walking Survey and other observations	0
Drone Surveys	55
Skerries Total	72
Howth	
Press release and media appeal	35
Walking Survey and other observations	3
Drone Surveys	109
Howth Total	147
Total number of gull nests identified during the Project	451

3.5 Balbriggan – Assessment of Gull Nests Observations

The most notable observation regarding roof-top gull nests from the study in Balbriggan is the very high density of nesting gulls on the roofs of the production plants and warehouses in the Wavin Group compound at the southern boundary of the town. According to John Rowland, engineering manager at the company, there have been gulls nesting at the site for many years but numbers have increased significantly in the last 4 to 5 years. The drone survey of the site revealed 51 nests distributed throughout the site although a majority of the nests were situated on the older buildings in the centre of the site (Plate 3.1).

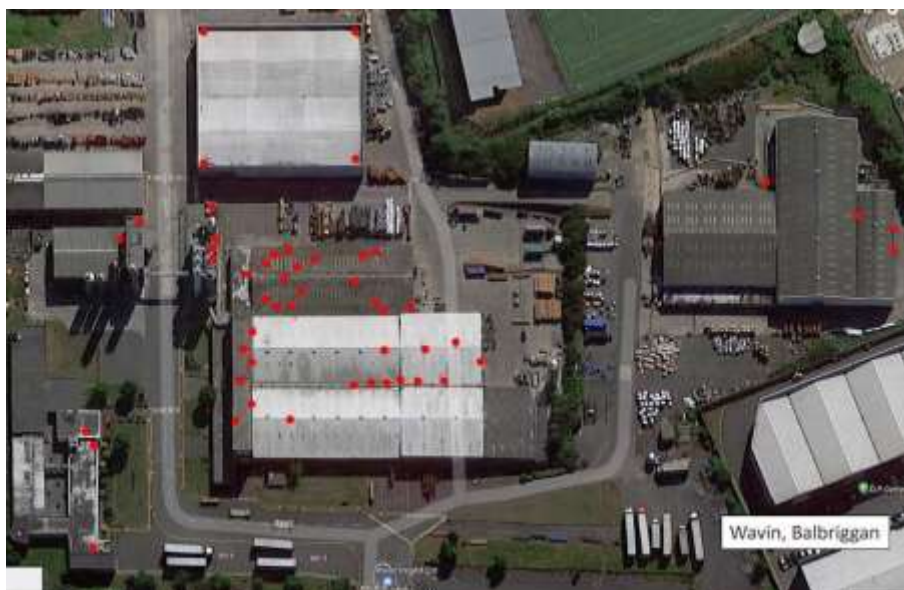


Plate 3.1 Distribution of gull nests (red dots) across the Wavin site in Balbriggan

The roofs in this section of the site were made of older style roof sheets at a shallow angle which meant that while some nests were built against walls, pipes, ventilation vents and other structure to keep them stable, some nests were built away from the edge of the roof. It was noted that some gulls would use items such as old car tyres on flat roofs to support their nests (Plate 3.2).



Plate 3.2 Herring Gulls using an old car tyre as nest support on roof of Wavin administration building

All the gulls nesting on the old roofs were Herring Gulls and the high density of nests on these roofs may reflect their natural instinct to nest together in colonies as seen in their more natural sea-cliff habitats.

There were two pairs of Lesser Black-backed gulls observed on the Wavin site. One pair was nesting alone on top of one of the silos and the other was on top of the newer production plant roof (building at the top of Plate 3.1); a third pair were observed nesting on top of the Ardgillan Community College building which is adjacent to the Wavin site.

There were 21 pairs of nesting gulls observed on the roofs of the relatively new Ardgillan Community College/Bracken Educate Together site adjacent to the Wavin

plant (Plate 3.3). Many of these were probably off-spring of the Wavin site population who are extending their distribution to these new buildings. Along with the anecdotal reports, this suggests that numbers of nesting gulls in this area is steadily increasing.



Plate 3.3 Ardgillan Community College/ Bracken Educate Together site adjacent to the Wavin plant

The drone footage revealed that there were a number of chicks on the roof of the school and they preferred standing on top of the glass skylights of the school (Plate 3.4).



Plate 3.4 Adult gulls and chicks observed on the roof and glass skylights of Ardgillan Community College

As the drone survey was conducted in August it also revealed a large number of chicks throughout the site including on roof tops, on top of the silos (Plate 3.3), but also on the ground. In a majority of cases these were chicks which had fallen off the roof before they could fly and were now walking around the grounds of the Wavin plant. However, it was also observed that in the north-east of the site there were three nests constructed on the ground and there were several chicks from these nests walking around the area. This would suggest that there are few predators in

the form of cats, dogs or foxes in the area and the gulls feel safe to nest on the ground.



Plate 3.3 Herring Gull nest and chicks on top of silos in the Wavin compound

The centre of Balbriggan town also had a relatively high density of gulls with 66 nests observed between the commercial centre, the Dublin Road, the Hampton Street area and the Balbriggan Community College. This figure could have been much higher if there were not for some business owners being permitted to remove nests and eggs from the roofs of their premises as permitted by the recent derogation to the European Communities (Wildlife Act 1976) (Amendment) Regulations 1986. One business owner operating in some warehouses in Convent Lane revealed that he had removed around 15- 20 nests from the roof of his building, although many of these may have been removed during 2017 when the derogation was first introduced.

The highest density of gulls nesting on residential roofs was observed in the Hampton Cove/Fancourt estates located next to the coast in the south east of Balbriggan (Plate 3.6). A majority of the responses to the media appeal came from this area and the drone survey revealed 21 nests in the area.



Plate 3.6 Gull nests (red dots) observed in the Hampton/Fancourt estates Balbriggan

All of these nests were Herring Gulls and no other species of gull was seen nesting here. It was also revealed by a member of CiB who resides in this estate that at least 15 nests had been removed from houses in this estate. These nests were considered in the nest totals when considering the number of nesting gulls identified during the project (Table 3.4).

A majority of the nesting gulls took advantage of the design and shape of the roofs in this estate to build their nests against the chimney stack which provided support and shelter for the nest (Plate 3.7). This was a typical nesting strategy observed in most of the residential estates in Balbriggan and also seen in the Skerries and Howth surveys.



Plate 3.7 Typical gull nests against chimney stacks in the Hampton Cove estate

While this survey of selected areas of Balbriggan identified 232 gull nests, this figure could possibly have been much higher as it is not known how many nest and eggs have been removed by residents and business owners under the derogation.

The 2016 CiB survey of 15% of Balbriggan covered by the recent derogation identified 99 roof nesting gulls. Using *Google Maps Pro* it was possible to estimate that this current survey found the 232 nest in approximately 12% of all of the town of Balbriggan. However, it is not possible to compare the two studies in this way as the current study includes the very dense nesting area around the Wavin site and it is possible that the drone survey also revealed many more nests that might have been observed or known about in the CiB 2016 survey.

3.6 Skerries – Assessment of Gull Nests Observations

The total number of gull nests identified on roofs in Skerries was 72 of which 55 were identified during the drone survey which covered an estimated 15% of the town and residential estates.

The areas of Skerries with the highest gull nest density were the Shenick Road, Shenick Avenue and Shenick Grove area with 29 nests identified. There were several responses to the media appeal from the old town area of Skerries but it proved difficult to conduct a drone survey in this area due to the lack of a suitable vantage point. Had a drone survey been conducted in this area then several more nests may have been revealed.

It had been reported prior to the current survey that there were large numbers of gulls associated with and possibly breeding on the roof of both the Realt na Mara National School and the Skerries Community College. Both of these buildings were covered during the drone survey and it revealed that while there was considerable historic and current gull activity on the roofs of both schools there was only one nest and chicks on the roof of the Realt na Mara National School and three nests on the Skerries Community College (Plate 3.8 and 3.9).



Plate 3.8 Drone footage of nest and one chick on roof of Realt na Mara National School

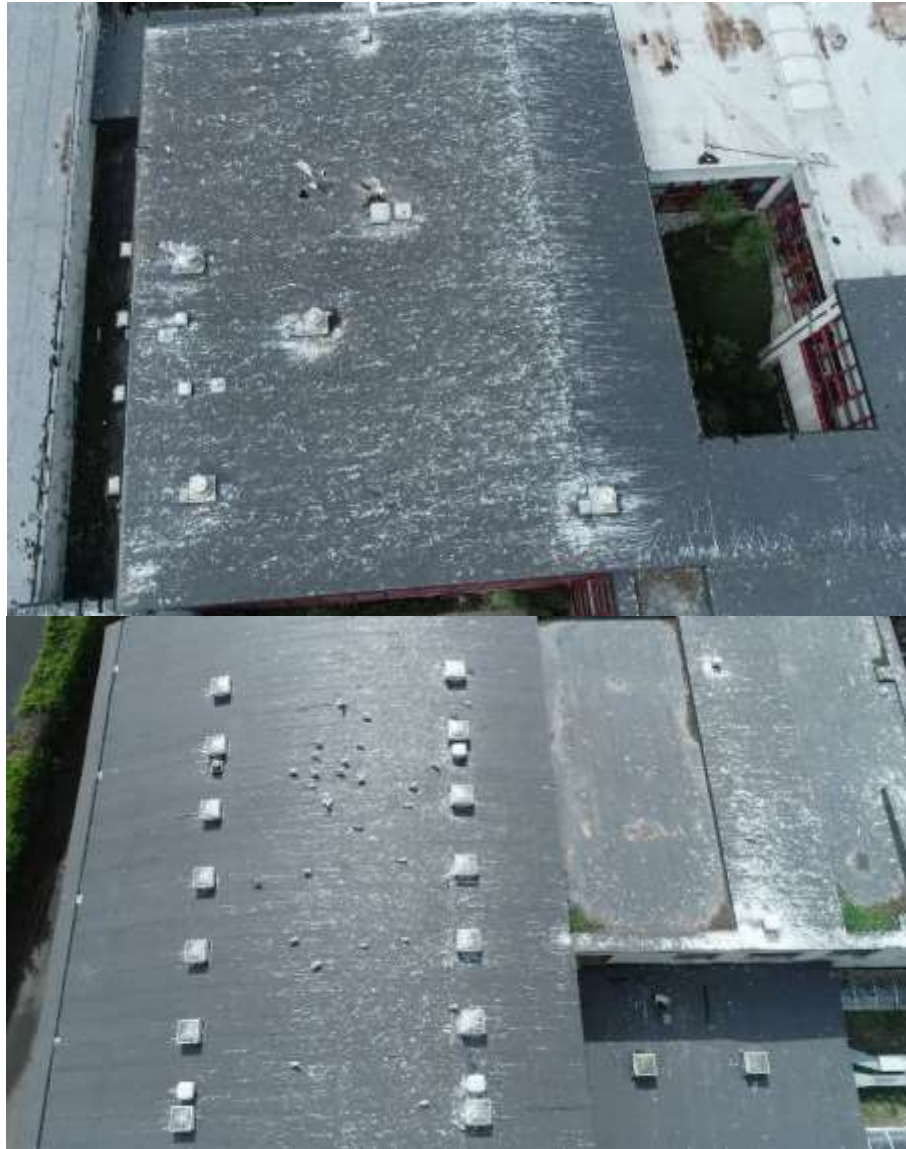


Plate 3.9 Drone footage of the extensive historical and current gull activity on the roof of Skerries Community College

3.7 Howth – Assessment of Gull Nests Observations

Some of the highest density of gull nests was observed in any of the three towns surveyed was seen in the Evora, Grace O'Malley and Balkill estates close to Howth harbour where 106 nests were identified. Reports from local inhabitants reveal that while there have been roof nesting gulls for the last 12-15 years there has been a marked increase in the last five years.

The drone survey revealed that, similar to roofs in Balbriggan and Skerries, a majority of the nests were built against or on top of the chimney stacks of private houses although there were also many examples of nests constructed on flat roofs including those of newly built houses (Plates 3.10 & 3.11).



Plate 3.10 Gulls nesting on top of chimney stack on Evora Park, Howth



Plate 3.11 Gull nesting on flat roofs in Howth

Although the Thormanby estates were not covered in the drone survey there were nine nests identified from this area either from the responses to the media appeal or from the walking survey. The reduced density of nests in this area may be due to being slightly further from the sea but residents here reported that the number of nesting gulls has increased in the last five years.

4. CONCLUSIONS

While the initial objective of Fingal County Council was to establish the total number of breeding pairs of roof-nesting gulls in each of the towns of Balbriggan Skerries and Howth, there were a number of project constraints (see Section 2.4) which meant that this was not possible. However, this project did use three different methodologies to identify the areas with high roof nesting densities and for counting and assessing these populations.

The initial press release and media appeal brought the project and its objective to the attention of the local residents in the three towns. While some of the emails did pinpoint houses possessing gull nests on their roofs, many of them just contained complaints about the nuisance factor of having gulls living in such close proximity and were seeking solutions to the problems. However, the media appeal did help to identify the areas in each town which seemed to have the highest density of roof nesting gulls which could then be further assessed by walk-over surveys or drone surveys.

Conducting walking surveys in each town to try and identify roof nesting gulls was the poorest of the three methodologies used. It would take an inordinate amount of time to walk all of the areas within each town as the distribution of roof nesting gulls is very extensive in all three towns. In addition to having very large areas to cover on foot the chances and opportunities of seeing roof nests from street level is very limited and for most of the time only the fronts of houses and building can be viewed. The weakness of this method of detecting nest was determined early in the project.

The footage of roof tops obtained from the drone flight provided excellent images of the nests, eggs and chicks on the roofs. The drones are capable for flying low over roofs and the high-definition cameras used made it easy to identify nests when being reviewed on screen.

The success of any drone survey does depend on a number of factors; it is most beneficial and efficient to have a suitable vantage point from which to conduct the filming. Filming from the ground restricts the distance the drone can fly as it has to remain within sight of the pilot; filming from tall buildings means that drone flights can be longer and far-reaching which reduces the time required to cover large areas.

The output from the drone flights is high-definition video footage which can be very large and requires considerable storage space on computers or in remote storage facilities e.g. i-cloud.

The time required to review all of the drone footage can also be time-consuming and extensive, although as in this case, as the analysis progressed the assessor became quicker at identifying gull nests, eggs and chicks on screen and then transferring this data to the appropriate maps and tables.

If suitable financial resources were available it would be possible using drone surveys to cover almost all of any particular town and be able to determine the number and location of most the gull nests present. However, if the derogation allowing the removal of nests and eggs is extended for future years and other towns are added to the derogation zone then it will be difficult to accurately determine the number of breeding gulls in any town.

5. REFERENCES

Community in Balbriggan (CiB), Balbriggan Community Report (December 2017), *Report on the efforts of a community to mitigate escalating and serious public safety and public health threats and other serious issues caused by a rapidly expanding urban gull population colonising and breeding in our town and its districts.*

Ross, K.E., Burton, N.H.K., Balmer, D.E., Humphreys, E.M., Austin, G.E., Goddard, B., Schindler-Dite, H., & Rehfisch, M.M. (April 2016) *Urban Breeding Gull Surveys: A Review of Methods and Options for Survey Design.* British Trust for Ornithology Research Report No. 680.

APPENDIX A

Derogation to the Regulation 3(1)(A) of the European Communities (Wildlife Act 1976) (Amendment) Regulations 1986 (SI No. 254 of 1986)

**DEPARTMENT OF ARTS, HERITAGE, REGIONAL, RURAL AND GAELTACHT
AFFAIRS**

DECLARATION UNDER REGULATION 3(1) (A) OF THE

EUROPEAN COMMUNITIES (WILDLIFE ACT 1976) (AMENDMENT)

REGULATIONS 1986 (S.I. No. 254 of 1986)

The Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs, being of the opinion that the species referred to in Schedule 1 to this declaration represent a threat to public health or safety or are likely to cause serious damage to crops or to livestock or are likely to cause damage to fauna and being satisfied that no other satisfactory solution exists, hereby declares pursuant to regulation 3(1)(a) of the European Communities (Wildlife Act 1976) (Amendment) Regulations 1986 (S.I. No. 254 of 1986), as adapted, that for the purpose of preventing the disease, injury or damage specified in column (2) of Schedule 1 by the species mentioned in column (1) of Schedule 1, the said species may be captured or killed or otherwise interfered with on any property by any of the means, arrangements or methods specified in column (4) of Schedule 1 during the period specified for each species in column (3) of Schedule 1 to this declaration in any location in the State, except where otherwise specified in column (3) of the Schedule to the declaration, by the owner or occupier of any such property or the servant or agent of the owner or occupier of any such property on which the said threat to public health or safety is represented by such species or in order to prevent serious damage to crops or to livestock or damage to fauna on such property, as specified in column (2) of Schedule 1.

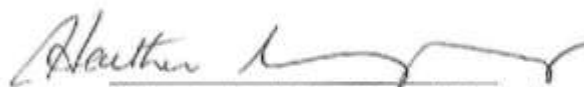
SCHEDULE 1

1	2	3	4
SPECIES TYPE	REASON FOR CONTROL	PERIOD/LOCATION COVERED BY DECLARATION	METHOD OF CONTROL
Hooded (Grey) Crow (<i>Corvus corone</i>)	Threat to public health and vector in the spread of animal diseases	1 May 2017 to 30 April 2018	Shooting with rifle or shotgun. Cage traps with or without live decoys subject to conditions in Note below. ⁽¹⁾
	Prevent serious damage to livestock	1 May 2017 to 31 May 2017 and 1 December 2017 to 30 April 2018	
	Protection of fauna, notably the nests and young of game birds	1 May 2017 to 30 September 2017 and 1 February 2018 to 30 April 2018	
Magpie (<i>Pica pica</i>)	Threat to public health and vector in the spread of animal diseases	1 May 2017 to 30 April 2018	Shooting with rifle or shotgun. Cage traps with or without live decoys subject to conditions in Note below. ⁽¹⁾
	Prevent serious damage to livestock	1 May 2017 to 31 May 2017 and 1 December 2017 to 30 April 2018	
	Protection of fauna, notably the nests and young of game birds	1 May 2017 to 30 September 2017 and 1 February 2018 to 30 April 2018	
Rook (<i>Corvus frugilegus</i>)	Prevent serious damage to cereal crops, brassicas and root crops such as potatoes and beet	1 May 2017 to 31 December 2017 and 1 February 2018 to 30 April 2018	Shooting with rifle or shotgun.
	Prevent damage to livestock feedlots	1 May 2017 to 31 May 2017 and 1 November 2017 to 30 April 2018	
Jackdaw (<i>Corvus monedula</i>)	Prevent serious damage to cereal crops, brassicas and root crops such as potatoes and beet	1 May 2017 to 31 December 2017 and 1 February 2018 to 30 April 2018	Shooting with rifle or shotgun.
	Prevent damage to livestock feedlots	1 May 2017 to 31 May 2017 and 1 November 2017 to 30 April 2018	

<p>Wood Pigeon (<i>Columba palumbus</i>)</p> <p>Feral Pigeon (<i>Columba livia</i>), Collared Dove (<i>Streptopelia decaocto</i>)</p> <p>The following specified members of the Pigeon family are not included:</p> <p>Stock Dove (<i>Columba oenas</i>), Turtle Dove (<i>Streptopelia turtur</i>), Wild Rock Dove (<i>Columba livia</i>), carrier pigeon, homing pigeon or any other domestic types of Rock Dove.</p>	<p>Prevent serious damage to arable crops, including cereals, legumes and brassicas</p> <p>Threat to public health notably contamination of food storage</p>	<p>1 May 2017 to 30 April 2018</p> <p>1 May 2017 to 30 April 2018</p>	<p>Shooting with rifle or shotgun.</p> <p>Shooting with rifle or shotgun. Non meat based poisoned or anaesthetic bait may be used as a method of control but only under permit with prescribed conditions as issued by the National Parks and Wildlife Service prior to control action taking place.</p>
<p>Herring Gull (<i>Larus argentatus</i>), Greater Black-backed Gull (<i>Larus marinus</i>), Lesser Black-backed Gull (<i>Larus fuscus</i>)</p>	<p>Threat to public safety</p>	<p>1 May 2017 to 30 April 2018 confined to the area within the boundary map at Schedule 2</p>	<p>To take the nests or to take the eggs</p>

GIVEN under the Official Seal of the Minister
for Arts, Heritage, Regional, Rural and
Gaeltacht Affairs

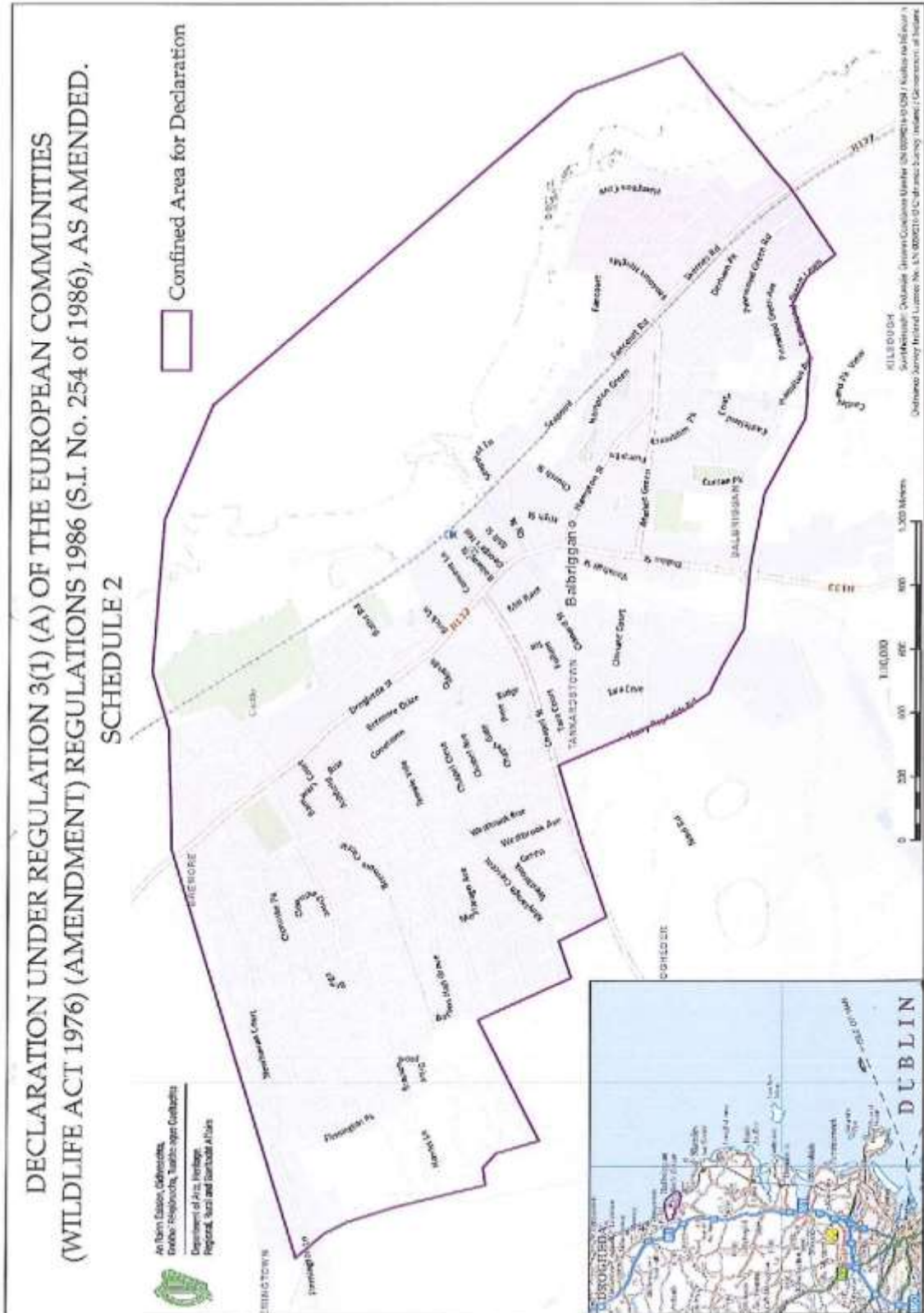
this 28th day of April 2017



Minister for Arts, Heritage, Regional, Rural and
Gaeltacht Affairs

NOTE:

⁽¹⁾ Where a live wild bird is used as a decoy it is necessary to ensure that the live decoy bird may only be used to hunt birds of the same species and that the live decoy bird must be regularly provided with ample food and water and that when caged must only be kept in a cage which is of sufficient dimensions to enable the bird to move and exercise freely.



APPENDIX B

Newspaper Article/ Press Release - May 2018

Fingal County Council

Press Release

April 30, 2018

Fingal County Council invites observations for Gull survey in Howth, Skerries and Balbriggan



Fingal County Council has commissioned a survey to establish the number of breeding gulls nesting on residential houses and industrial buildings in Howth, Skerries and Balbriggan and is inviting observations from residents regarding the location of the birds.

Conditions in urban areas have led to an increase in the number of gulls in urban environments, particularly Herring Gulls (*Larus argentatus*) and Lesser Black-backed Gulls (*Larus fuscus*). Rooftops provide excellent nesting sites that are protected from the elements and free from predators such as foxes and rats. The availability of food in urban areas leads to a high survival rate among the young chicks who generally return to breed in the same colony (town) year after year.

Fingal County Council Executive Parks Superintendent, Hans Visser said: "We commissioned this survey to get a better idea of the number of gulls in throughout the three seaside areas. This allows us to track any fluctuation in the gull population as well as their breeding and nesting habits."

For most of the year these gulls are fairly well dispersed and look for food out at sea or away from the towns. However, during the breeding season which starts in April or May, the gulls will start to congregate near their breeding sites and build the rooftop nests. In June, when the eggs hatch, the adults become very active as the young call constantly for food and become more visible as they look for opportunities to scavenge within the towns. The chicks fledge in July and August and by the end of the summer the gulls will again disperse and things quieten down until the next breeding season.

The Environmental Team from Roughan and O'Donovan Ltd (ROD) have been appointed by Fingal County Council to conduct the breeding gull survey over the next three months. Michael Bailey from ROD is the ecologist working on the project and any observations can be submitted to him by emailing michael.bailey@rod.ie. He will also be visiting each of the

towns over the next three months in order to build up a detailed picture of the breeding gulls in the area and would be happy to speak to residents and visit any sites where gulls are known to nest.

ENDS

For further information, please contact press@fingal.ie

Photo caption: Fingal County Council would like to hear from residents regarding the location of breeding gulls across Howth, Balbriggan and Skerries.

APPENDIX C

Drone Pilot Competency Certificate issued by the Irish Aviation Authority



IRISH AVIATION AUTHORITY SMALL UNMANNED AIRCRAFT (SUA)

SUA PILOT COMPETENCY CERTIFICATE

1. Pursuant to Articles 5 and 9 of S.I. 563/2015, (Small Unmanned Aircraft (Drones) and Rockets Order), the Irish Aviation Authority hereby permits the holder of this Certificate to operate a Small Unmanned Aircraft for the purpose of a Specific Operating Permission subject to the conditions specified in Schedule 2.

**NAME: GARRY McGUARAN ,
ADDRESS: DRUMHILLA, CARRIGAN, CO CAVAN**

Certificate No. 100305

EXPIRY DATE: 11th January 2020

SCHEDULE 1 – SYSTEM TYPE AND MAXIMUM TAKE OFF WEIGHT

SUA Type(s)		Maximum Take-Off Weight(s)
Helicopter	No	N/A
Multi-Rotor	Yes	7KG
Airplane	No	N/A

- END OF SCHEDULE -

SCHEDULE 2 – CONDITIONS

1. The Certificate holder permit a Flight Operations Inspector of the Irish Aviation Authority access to any premises in the occupation or control of the holder of this Certificate for the purposes of examining the premises and to any document, equipment, tool, material or other items of whatsoever nature, relating to the operation of a Small Unmanned Aircraft (SUA) system there-under, kept or used, or intended to be used, in conjunction with the operation of a Small Unmanned Aircraft system pursuant to this Certificate.
2. Any flights carried out pursuant to this Certificate shall be conducted under Visual Meteorological Conditions (VMC), with flight visibility of not less than 3 kilometres and with a cloud ceiling of not lower than 1000 feet above the operating area.
3. The Certificate Holder (system operator) shall only operate an SUA when able to exercise a Visual Line Of Sight (VLOS) capability. The SUA shall be operated with the SUA Pilot maintaining direct, unaided visual contact with the SUA at all times. Operation of the SUA system while the SUA Pilot's field of view is restricted or impaired (by reference to a vision enhancing system such as remote goggles) **is not permitted**.

Signed and issued on behalf of the Irish Aviation Authority.

Capt. Lou Fine

**Capt. Lou Fine,
Flight Operations Inspector.
Issue Date: 12th January 2017**

Official Stamp:



APPENDIX D

Maps showing drone flight paths and roof-top gull nests identified in selected areas of Balbriggan, Skerries and Howth

Balbriggan



Balbriggan 1 - Commercial Centre

Balbriggan 2 - Dublin Road

Balbriggan 3 - Hampton Street

Balbriggan 4 - Fancourt/Hampton Cove Area

Balbriggan 5 - Castlemill Complex/Flemington Community Centre

Balbriggan 6 - Dun Saithne/Newhaven Bay

Balbriggan 7 - Bremore/Brackenwood

Balbriggan 8 - Westbrook

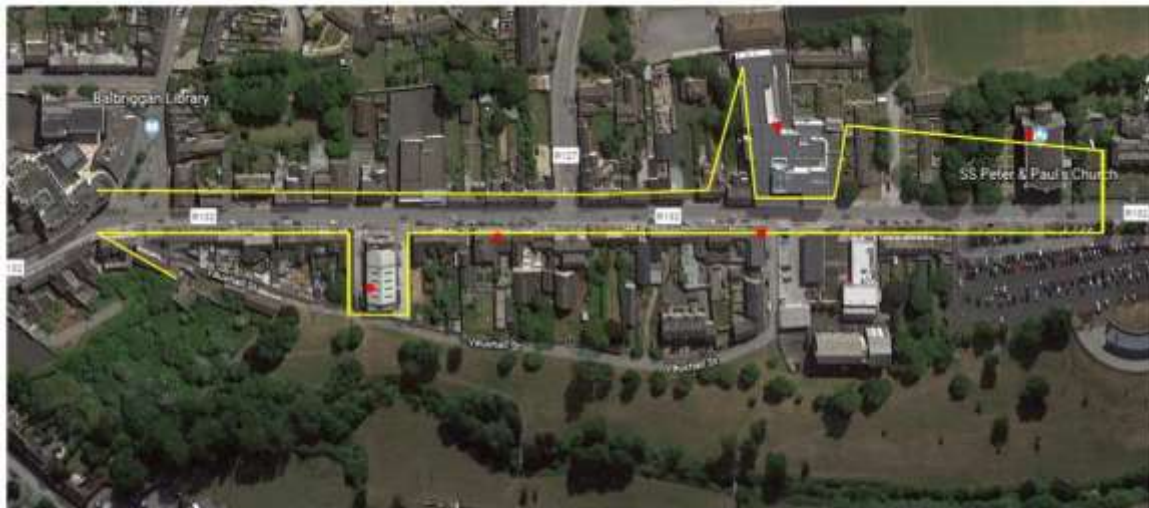
Balbriggan 9 - Moylaragh

Balbriggan 10 - WAVIN Plant

Balbriggan 11 - Ardgillan Community College/ Bracken Educate Together



Balbriggan 1



Balbriggan 2



Balbriggan 3



Balbriggan 4



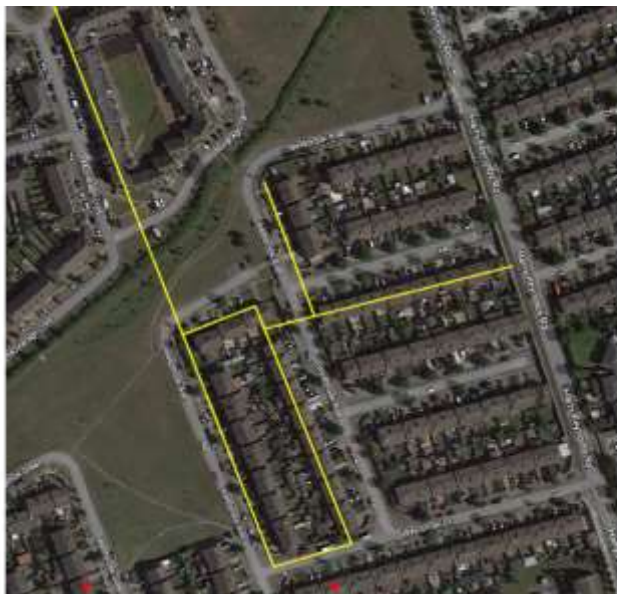
Balbriggan 5



Balbriggan 6



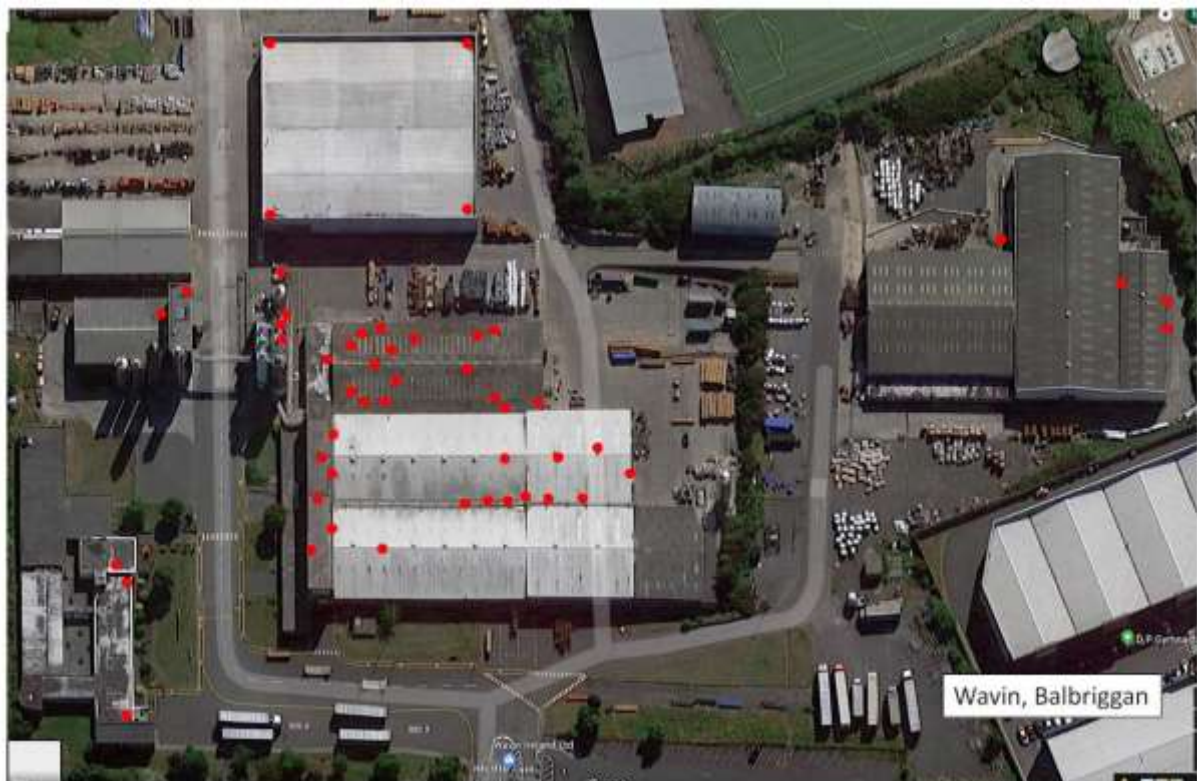
Balbriggan 7



Balbriggan 8



Balbriggan 9



Skerries



Index to town areas

Skerries 1 - Skerries Community College/Seacrest/Townparks

Skerries 2 - Shenick Road/Avenue/Grove

Skerries 3 - Millhill

Skerries 4 - Mourne View

Skerries 5 - The Vale/Rise/Way, Townparks

Skerries 6 - Mourne Drive/Crescent/Park



Skerries 1



Skerries 2



Skerries 3



Skerries 4



Skerries 5



Skerries 6

Howth



Index to town areas

Howth 1 - Evora Park/Grace O'Malley Road

Howth 2 - Balkill Park

Howth 3 - Grace O'Malley Drive

Howth 4 - Balkill Road (north)

Howth 5 - Balkill Road (south)



Howth 1



Howth 2



Howth 3



Howth 4



Howth 5

APPENDIX E

Spreadsheets listing roof-top gull nests in Balbriggan, Skerries and Howth

Balbriggan

Balbriggan 1 - Commercial Centre			
Address		Nests	Observations
House/Business #	Street	#	
Garage Roof	Tankardstown	1	On roof of gargare complex where numerous nests are known to have been removed by garage owner.
15	High Street	1	Against chimney stack
35	"	1	"
The Mall Shopping Center	Quay Street	1	Flat roof
13	Bridge Street	1	Han Lin Palace
11	"	2	Ashling Dry Cleaners
14	"	1	Valley between two roofs
12	"	1	Burnt building
6	"	1	Valley between two roofs
Unit 7	Harbour Mill Building	2	Flat roof
8	Mill Street	1	"
2	Drogheda Street	2	permanent tsb
21	"	2	The Madras
24	"	1	Flat roof
20	"	1	Limestone House
18	"	1	SPAR, 1 chick visible
10	"	1	Finger Lickin Chicken
George's Court	"	1	Against chimney stack
Fingal House	"	2	Balbriggan Medical Centre
O'Regan Pharmacy	"	1	Falt roof
2	Railway Street	1	Moti Mahal Restaurant
21	"	1	Against chimney stack
25	"	1	Valley between two roofs
27	"	3	"
31	"	1	Flat roof
Post Office Building	"	4	On apartment roofs
73	"	2	Vincent's
Balbriggan Community College	"	3	Section of College on Railway Street
42	"	1	Suds Laundry
4	Chapel Street	1	On roof window
8	Clonard Street	1	Flat roof
12	"	1	"
16	"	1	"
20	"	1	Valley between two roofs
1	"	1	Flat roof
2	Auhain Court	2	Against chimney stack
Apartment 7	McNeill Hall	1	Flat roof
Medical Centre	Crn. Drogheda & Clonard	1	"
Total Gull Nests Identified		52	

Balbriggan 2 - Dublin Road			
Address		Nests	Observations
House/Business #	Street	#	
SS Peter & Paul Church	Dublin Street	1	In gully on edge of roof
Sambrooks Tiles & Bathrooms	"	1	Flat roof
65	"	1	above shop.
6	"	1	Between chimney pots
SOS Marine	NHS Building	2	Flat roof
Total Gull Nests Identified		6	

Balbriggan 6 - Dun Saithne/Newhaven Bay			
Address		Nests	Observations
House/Business #	Street	#	
114	Newhaven Bay	1	
73	Clonuske Park	1	
9	Dun Saithne Green	1	
65/66	Dun Saithne Crescent	1	
75/76	"	1	
92	"	1	
Total Gull Nests Identified		6	

Balbriggan 3 - Hampton Street			
Address		Nests	Observations
House/Business #	Street	#	
1	St. Peter's Terrace	1	Chick on roof
13	"	1	Nest recently removed but signs of much activity and quano
29	Hampton Street	1	
77	"	1	Flat roof
42	"	1	Against chimney
28	"	1	Retford House
8	"	1	The Therapy Centre
1	"	1	
Total Gull Nests Identified		8	

Balbriggan 4 - Fancourt/Hampton Cove Area			
Address		Nests	Observations
House/Business #	Street	#	
63	Hampton Cove	1	Against off-set chimney stack
67	"	1	"
69	"	1	"
88	"	1	"
133	"	1	"
137	"	1	"
144	"	1	"
146	"	1	"
150	"	1	" - partially removed
12	Fancourt Heights	1	Against off-set chimney stack
14	"	1	"
20	"	1	"
24	"	1	"
28	"	1	"
40	"	1	"
56	"	1	"
59	"	1	"
82	"	1	"
84	"	1	"
95	"	1	"
112	"	1	"
Total Gull Nests Identified		21	

Balbriggan 5 - Castlemill Complex/Flemington Community Centre			
Address		Nests	Observations
House/Business #	Street	#	
Balbriggan Educate Together	Hamlet Lane	1	In joints between flat roofs
Flemington Community Centre	"	4	Flat roof by air intakes
Really Cool Afterschool	"	1	"
Castlemill Retail Park and Appartments	"	2	Flat roof
Castlemill Shopping Centre	"	1	"
2	Hamlet Lane Lodge	1	"
39	Hamlet Square	1	"
40	Baron's Hall Rise	1	"
Total Gull Nests Identified		12	

Balbriggan 6 - Dun Saithne/Newhaven Bay			
Address		Nests	Observations
House/Business #	Street	#	
114	Newhaven Bay	1	Against chimney of modern house
73	Clonuske Park	1	"
9	Dun Saithne Green	1	"
65/66	Dun Saithne Crescent	1	"
75/76	"	1	"
92	"	1	"
Total Gull Nests Identified		6	

Balbriggan 7 - Bremore/Brackenwood			
Address		Nests	Observations
House/Business #	Street	#	
9	Brackenwood Place	1	Against chimney
49	Brackenwood Drive	1	"
52	"	1	"
45	Bremore Hall Park	1	"
58	Bremore Hall Grove	1	"
Total Gull Nests Identified		5	
Balbriggan 8 - Westbrook			
Address		Nests	Observations
House/Business #	Street	#	
37/39	Westbrook Drive	1	Against central chimney stack
48/50	Westbrook Green	1	"
Total Gull Nests Identified		2	
Balbriggan 9 - Moylaragh			
Address		Nests	Observations
House/Business #	Street	#	
3	Moylaragh Close	1	Against chimney stack
8	"	1	"
Total Gull Nests Identified		2	
Balbriggan 10 - WAVIN Plant			
Address		Nests	Observations
House/Business #	Street	#	
Wavin Production Plant		51	Flat roofs, silos, sloping roofs, ground nests x2
Balbriggan 10 - Ardgillan Community College and Bracken Educate Together			
Address		Nests	Observations
House/Business #	Street	#	
Ardgillan CC		11	Flat roofs, against roof windows and air intakes
Bracken ET		10	"
Total Gull Nests Identified		21	
BALBRIGGAN TOTAL		186	

Skerries

Skerries 1 - Skerries Community College/Seacrest/Townparks			
Address		Nests	Observations
House/Business #	Street	#	
Skerries Community School		3	Numerous birds and extensive fouling on roof and skylight
51	Seacrest	1	Against chimney
46	"	1	"
55	Townparks	1	"
Texaco Filling Station	Townparks/Dublin Road	1	Flat roof
Total Gull Nests Identified		7	
Skerries 2 - Shenick Road/Avenue/Grove			
Address		Nests	Observations
House/Business #	Street	#	
16	Shenick Park	1	Against central chimney stack
17A	Shenick Road	1	"
32	"	1	"
37	"	1	"
41	"	1	"
43	"	1	"
44	"	1	"
52	"	1	"
64	"	1	"
Holmpatrick Shopping Centre		1	Falt roof
3	Shenick Avenue	1	Against central chimney stack
13/15	"	1	"
25/27	"	1	"
29/31	"	1	"
35	"	1	"
43	"	1	"
21	Shenick Grove	1	"
25	"	1	"
31	"	1	"
34	"	1	"
50	"	1	"
56	"	1	"
15	Shencik Drive	1	"
16	"	1	"
21	"	1	"
22	"	1	"
23	"	1	"
4	Churchfield Lawns	1	"
105	Downside Park	1	"
Total Gull Nests Identified		29	
Skerries 3 - Millhill			
Address		Nests	Observations
House/Business #	Street	#	
-	-	-	NO NESTS OBSERVED
Total Gull Nests Identified		0	
Skerries 4 - Mourne View			
Address		Nests	Observations
House/Business #	Street	#	
Realt na Mara National School		1	Flat roof
3	Mourne View	1	Against central chimney stack
9	"	1	"
19	"	1	"
32	"	1	"
40	"	1	"
41	"	1	"
43	"	1	"
44	"	1	"
63	"	1	"
97	"	1	"
102	"	1	"
Total Gull Nests Identified		12	

Skerries 5 - The Vale/Rise/Way, Townparks			
Address		Nests	Observations
House/Business #	Street	#	
8	The Way	1	Against central chimney stack
17	"	1	"
8	Rise	1	"
11	"	1	"
28	"	1	"
14	Vale	1	"
54	"	1	"
Total Gull Nests Identified		7	
Skerries 6 - Mourne Drive/Crescent/Park			
Address		Nests	Observations
House/Business #	Street	#	
-	-	-	NO NESTS OBSERVED
Total Gull Nests Identified		0	
SKERRIES TOTAL		55	

Howth

Howth 1 - Evora Park/Grace O'Malley Road			
Address		Nests	Observations
House/Business #	Street	#	
1	Evora Park	1	Against chimney stack
3	"	2	Against chimney and above roof window
5	"	1	Against chimney stack
7	"	1	"
8	"	1	"
9	"	1	"
13	"	1	"
14	"	1	"
15	"	3	"
17	"	1	"
19	"	2	Against chimney stack and flat roof
21	"	1	Flat roof
23	"	1	Against chimney stack
25	"	1	"
27	"	1	"
29	"	2	4 chicks visble on roof
39	"	1	Against chimney stack
39/40	Evora Cresent	1	Against single pot chimney stack on slope of roof
41/42	"	1	"
43/44	"	1	"
45/46	"	1	"
47/48	"	1	"
49	"	1	In corner of joint with new extension
1/3	Grace O'Malley Road	1	Against central chinmey stack 6 pot
21/23	"	1	"
22/24	"	1	Against central chinmey stack 4 pot
25/27	"	1	Against central chinmey stack 6 pot
29/31	"	1	"
34/36	"	1	"
37/39	"	1	"
41/43	"	1	"
44	"	1	"
56	"	1	"
62/64	"	1	"
67	"	1	"
71	"	1	"
75	"	1	"
74/76	"	1	"
84	"	1	"
87	"	1	"
93	"	1	Corner of flat roof
99	"	1	Against single pot central chimney stack
3	Evora Terrace	1	On flat roof
4	Dunbo West	1	"
4	Dunbo Hill	1	"Dunbo House" On flat roof
9	Dunbo Hill	1	
Total Gull Nests Identified		51	

Howth 2 - Balkill Park			
Address		Nests	Observations
House/Business #	Street	#	
Mariner's Hall	Balglass Road	1	
61	"	1	
63	"	1	
67	"	1	
76	"	1	
83	"	1	
86	St Peter's Terrace	1	
4/6	Balkill Park	1	
8/10	"	2	Against mid-roof chimney stack and roof window
14/12	"	1	Central square chimney stack with 4 pots - nest between pots
18/16	"	1	"
19	"	1	Against chimney stack of semi-detached house
20/22	"	1	Central square chimney stack with 4 pots - nest between pots
27	"	1	"
29	"	1	
32/34	"	1	
36/38	"	1	
37	"	1	
44	"	1	Against roof window
46	"	1	Central square chimney stack with 4 pots - nest between pots
50	"	1	"
50A	"	1	Against mid-roof chimney stack
62/64	"	1	
66/68	"	1	
70/72	"	1	
78/80	"	1	
81	"	1	
82/84	"	1	
83	"	1	
Total Gull Nests Identified		29	
Howth 3 - Grace O'Malley Drive			
Address		Nests	Observations
House/Business #	Street	#	
2	Grace O'Malley Drive	1	Against single pot chimney stack in slope of roof
5	"	1	"
8	"	1	"
9	"	1	On flat roof extension
17	"	1	Against single pot chimney stack in slope of roof
19	"	1	"
34	"	1	"
36	"	1	"
40	"	1	"
42	"	1	"
46	"	1	"
48	"	1	"St. Martins"
49	"	1	Against single pot chimney stack on centre ridge of roof
50	"	1	"
51	"	1	Against single pot chimney stack in slope of roof
52	"	1	"
62	"	1	"
64	"	1	"
65	"	1	Against single pot chimney stack on centre ridge of roof
66	"	1	Against single pot chimney stack in slope of roof
70	"	1	"
72	"	1	"
76	"	1	"
78	"	1	"
Howth Primary School		1	Nest on corner of portacabin - 20+ gulls on roof of school and extensive gull fouling on roof
"		1	Nest on sloped roof
Total Gull Nests Identified		26	

Report

*on the efforts of a community
to mitigate escalating and serious
public safety and public health threats
and other serious issues
caused by a
rapidly expanding
urban gull population
colonising and breeding
in our town and its districts*



Photograph :(unattributed)

The photograph below shows Kittiwakes on sea cliffs i.e. in their traditional natural habitat. The staining on the cliffs is caused by fouling with uric acid (the gull equivalent of urine), faeces, vomit and decaying detritus from nests.

The herring gull is a close relative of the Kittiwake, though larger. This Report arose because of serious problems being caused in human communities by high-density, urban-adapted herring gull colonies living and breeding in too close proximity to people.

A herring gull nest operates with even greater levels of intense fouling for up four months, usually with three chicks and two parent gulls present throughout, and for up to eight months as fledglings cling to the nest site until they either move to winter roosts or migrate. When gulls are content in an area they winter 'at home' and are present all year round.

Herring gulls typically live for twelve years (some for thirty+ years); females can breed for twenty+ years, usually three chicks a year. Gulls have high location-loyalty and re-use successful nest sites each year. Four year-old gulls return to breed near where they were hatched, thus creating and rapidly expanding colonies very close to people.

The Seabird 2000 Census (1998-2002) red-listed herring gulls in Ireland claiming a 90% drop in numbers. That claim related to gulls in seaward habitat only. Urban gulls were seemingly rare or not fully counted in 2002 – with only two hundred and nine roof-nesting pairs recorded nationally in the census.

While the photograph shows heavy fouling from nests, an image that would inspire common-sensed concern about health risks if it was on a house, or a school, or a restaurant, or a supermarket - it does not convey the deafening 24/7 cacophony, nor does it portray the extensive damage caused by gulls on roofs, or the wild, aggressive, predatory, cannibalistic and often brutal behaviour of the herring gull illustrated in photographs in this Report – natural behaviour that belongs in the wild and not in housing estates or schools or human amenity areas.

Only people who live with the impacts of high-density urban colonies of herring gulls day and night for months on end understand fully the negative impacts of that on daily life.



origin and circulation

response requested

This Report was compiled by concerned citizens and the community in Balbriggan (CiB). It was submitted electronically on 4th December 2017 to the Private Secretaries of the following Ministers for appropriate circulation in their respective Departments:

Minister Madigan', Department of Culture, Heritage and an Gaeltacht (DCHaG)

Minister Harris, Department of Health (DoH)

Minister Murphy, Department of Housing, Planning and Local Government (DHPLG).

It was also submitted to:

Dr. Paul J. McKeown, Director of the Health Surveillance and Protection Centre (HSPC)

Mr. Paul Reid, Chief Executive Officer of Fingal County Council (FCC)

Mr Gilbert Power, Director of Services, FCC

Mr. George Sharpson, Principal Environmental Health Inspector (HSE) FCC.

Electronic copies were also circulated to all of the elected public representatives for Balbriggan and Dublin Fingal North, each of whom supports the Balbriggan community in their pursuit of solutions for urban gull issues from the civil authorities:

Alan Farrell, TD

Brendan Ryan, TD

Clare Daly, TD

Darragh O'Brien, TD

Louise O'Reilly, TD

Gráinne Maguire, County Councillor

Malachy Quinn, County Councillor

Tony Murphy, County Councillor

CiB is asking that the Departments, the HSE/HSPC and FCC formally acknowledge the Report, and reply if possible by 31st January 2018 with substantive comments on the Report's conclusions and recommendations in the contexts of a) the Derogation Process Review scheduled for early 2018, b) the May 1st 2018 renewal date for the legal Derogation Declaration, c) the potential inclusion of evidence-based, gull-related Antimicrobial Resistance public health concerns in the deliberations of the recently established National Interdepartmental AMR Consultative Committee working within the DoH's iNAP Project, and d) necessary undertakings and preparations in respect of Derogation licencing (DCHaG & potentially DoH) and/or operational managed services (DHPLG/FCC) that might apply in respect of the 2018 Derogation Declaration.

The circulated Departments, HSE/HSPC and FCC have the consent and trust of CiB to share this Report with appropriate Agencies and organisations. CiB expects that normal redaction protocols will be applied if this Report features in Freedom of Information (Fol) releases, and requests notification of any Fol releases (and recipients) of the Report.

origin and circulation

response requested

In addition to the circulated recipients listed above, this Report and enclosures is also provided to DCHaG' National Parks and Wildlife Service as CiB's first submission to the Project Team being formed to review the (Birds Directive) Derogation processes. Depending on the responses to this report, CiB may make further submissions to that Project Team.

Signed:


Gene McKenna


Gerry Coffey


Don Costigan


Dave Sorensen


Tom Cardiff

Date:

4th December, 2017

:

report contents:

1. opening statement
background, purposes and objectives of this report
2. community support
all sectors and all national and local public representatives
- 3a. usage statistics and summary analysis
sampled data, Derogation 2017.18, Schedule 2
- 3b. usage case studies
residential, business and institutions
4. summary impacts on communities
urban gull issues
5. antimicrobial resistance
urban gulls and public health and safety
6. urban roof-top nesting by gulls
simple truths and plain logic
7. gulls and food, people and policy
where is the truth in this?
8. the benefit of hindsight
deficient, lagging, public policy
9. conclusions & recommendations
and what happens next
10. photographs and media articles
the truth about what gulls are naturally capable of
11. separate attachments provided electronically

a) mp3 recording of gull calls – relevant to the noise claims, refer to page 27

b) mp3 recording from RTE's 'Awake – the Science of Sleep, refer page 27

c) three mp3 recordings of radio interviews with Birdwatch Ireland

1.

opening statement

background, purposes and objectives of this report

1.

This Report follows a coming together of the Balbriggan community in May 2016, and a campaign since then, to describe local experiences and to bring to light several serious and negative impacts on the community from expanding urban gull colonies – impacts that are causing escalating, uncivilised, dangerous, and unacceptable living conditions.

2.

The term ‘campaign’ is used to reflect the community’s initiative to address very worrisome health and safety concerns and many other serious problems being caused by urban gull colonies. Concerns were such that they spawned a community-wide petition including eight housing estates, schools, clubs, and several businesses - i.e. a concerted, sustained, evidence-based community action to protect its citizens.

3.

A one-year pilot Derogation (Schedule 2) 2017.18 was published by DCHaG on 28th April 2017. It permitted removal of gull nests and eggs in a zoned area of Balbriggan and its districts for reasons of public safety. While this ‘pilot’ was widely welcomed, late timing and incorrect media statements regarding putative FCC involvement in “doing the work” lead to public confusion about the implementation. Notwithstanding, limited worthwhile use of the Derogation was achieved, and details are set out in this Report.

4.

Sampled statistics, case studies and summary analysis from the use of the Derogation are provided. The Report also distils the background and key evidence that gave rise to the campaign. This has been done in order to a) emphasize the extent of the negative impacts on the community, b) inform the Project Team that will conduct the Derogations Process Review in early 2018, and c) support the conclusions reached and the recommendations made in Section 9 of the Report.

5.

The first duty of every Government Department and Agency is to citizens. Communities living with the impacts of gull issues are most qualified to judge the severity of them. It is the responsibility and a primary public duty of our civil authorities to address these issues as patently catered for within existing national and EU legislative provisions.

6.

Our UK and other EU neighbours have long recognised the urban gull problem and have policy, procedural and operational practices in place for years now, within the terms of the EU Birds Directive, expressly for reasons of public health and safety. These facts were acknowledged by DCHaG in a meeting with CiB in December 2016.

7.

The primary objectives of this Report are to continue to convince the civil authorities that serious, escalating, multifaceted, and complex problems exist with urban gulls, that resultant negative impacts on communities are unacceptable, and that a comprehensive new Derogation, and Local Authority managed services in line with proven best UK and EU practices, are necessary to bring and keep the urban gull problem under control.

1.

opening statement

background, purposes and objectives of this report

8.

The pilot Derogation in May 2017 was welcomed with considerable relief by the Balbriggan community and we record our appreciation to the former Minister DCHaG here. CiB believe that the urgent need for the Derogation will be self-evident from the statistics, case studies and further perturbing evidence provided in this Report.

9.

The 'public safety' criterion of the legal EU Derogation was recognised by DCHaG in the pilot decision. CiB believes that Irish and International evidence presented in this Report clearly establishes a need to recognise that the 'public health' criterion included in the legal text of the EU Derogation also applies to this issue. This will create a more serious risk profile, and a concomitant need for Local Authority managed services to address it.

10.,

It is important to understand that the Derogation control measure (nest and egg removal) piloted in May 2016 is an acknowledged 'non-harm' measure, and is the prevalent such measure across the UK and Northern Europe under the pertinent public health and safety Derogation in the EU Birds Directive. At no stage has CiB ever called for any harm measures to be licenced or deployed.

11.

Our community is asking the Departments circulated with this Report to give it careful consideration and the necessary and appropriate follow up. Compelling evidence remains for the continuation and indeed up-scaling of the 2017.18 Derogation, supported by Local Authority managed services in line with UK and EU best practices for public health and safety reasons. CiB is asking for substantive responses to the Report and in particular to the conclusions and recommendations in Section 9 of the Report, if possible by 31st January 2018.

12.

Accordingly, this Report is submitted in good faith having been assembled with best endeavours, voluntarily, from the Balbriggan community as an accurate, evidence-based contribution to the efforts now needed from the civil authorities to tackle urban gull issues and alleviate the worst impacts being imposed on communities.

2.

community support

all sectors and all national and local public representatives

1.

The concerns, frustration and fear in the community about several aspects of the gull issues, and the somewhat dismissive nature of initial official responses received to the request for help that was submitted to the civil authorities spawned a sustained comprehensive ongoing community-wide campaign.

2.

A small committee was formed (the signatories of this Report) and recruited a further twelve people from across the town and districts of Balbriggan to carry a detailed petition proposal through eight major housing estates, schools, several businesses, local clubs, shops and institutions. This structure was considered optimal to best represent the views, concerns and experiences of the community.

3.

Very high local consciousness of the issue became apparent at the outset of the petition phase and this galvanised the community effort. The resulting petition had over six hundred signatures representing families and businesses, and given this overwhelming response, it was felt unnecessary to cover further estates. Several businesses and the Principal of a school experiencing significant gull issues for years wrote directly to DCHaG and FCC.

4.

Full copies of the petition were provided to the Minister and Secretary General at DCHaG, the CEO and Director of Services at FCC and the five TDs for Dublin Fingal North; the petition was also notified to Balbriggan's three County councillors.

5.

A copy of the petition cover declaration as signed by the twelve petition carriers and witnessed by CiB and the detailed petition proposal that was put to people when they were asked to support the campaign is provided overleaf along with photographs of the completed petition document.

6.

All five of the TDs (1FG, 1FF, 1Lab, 1SF 1Ind) and Balbriggan's three County Councillors (1SF and 2Ind) - through the course of several detailed meetings - closely questioned and examined the community evidence of this problem, and all, ad idem, reached agreement as to the seriousness of the issue and the need for remedial actions from the civil authorities. The representatives were already aware of the issue from comments that they had picked up around the constituency, but were very surprised at the true scale of the problem when they reviewed the evidence. All of the public representatives continue to fully support the community in this campaign.

7.

After an inconclusive meeting between CiB and Department officials on 8th December 2016, seven months after the first request for help was submitted to DCHaG, the five TDs wrote a joint letter to the Minister at DCHaG later that month seeking a meeting and stating their views and concerns i.e. that this is a serious issue, and a genuine public health and safety issue.

2.

community support

all sectors and all national and local public representatives

8.

The TDs met the Minister and Department officials in February 2017 and an agreement was reached that a solution would be worked on in time for the 1st May 2017 Derogation Declaration. A limited 'pilot' Derogation (Schedule 2) for reasons of public safety, zoned to Balbriggan and its districts only, was Declared by DCHaG on 28^h April 2017:

https://www.npws.ie/sites/default/files/files/General%20Wild%20Bird%20Declaration%202017_18.pdf

Sampled data and case studies from the use of this Derogation are provided in Sections 3a and 3b of this Report.

9. This is a copy of the petition proposition that was put to people throughout Balbriggan and its districts:

Dear Resident(s) at no. _____, "xxxxxxxxx housing estate"

As neighbours and fellow residents of the estate, we are dropping the enclosed material in to you for your consideration. The material relates to a campaign started in May of this year by a small group of people, asking the authorities to investigate and start to remedy the escalation in numbers of seagulls all around the town and residential districts, and address the many problems being caused by gulls for residents, businesses schools and clubs.

The central concern is that there are increased numbers of gulls, especially since the closure of Balleally dump. The gulls are very aggressive; they can inflict serious blood injury and or infection. Their numbers are set to 'double every year, and already dangerous number concentrations in parts our town areas will continue to grow as long as the current situation remains the same.

The campaign is calling for 'non-harm' measures that do not involve any harm to live chicks or adult gulls. A good example of such a solution can be seen online about a town called Devizes in the UK.

We have been informed, as have people in most residential areas of the town, and many businesses, that the response from the top in Fingal County Council (FCC) has been "*we have no role in this issue at present, we will reconsider our position if/when new policy relevant to FCC emerges from national level policy bodies*"; the response from the National Parks and Wildlife Service (NPWS) has been "*we only enforce the protection legislation covering the seagulls, we have no bird control function, and this is probably a matter for your local authority*". It is clear that nothing will be done and the situation will get worse unless people call for a remedy.

We have also been informed that despite a very detailed understanding of this problem in both FCC and NPWS, neither organisation has even acknowledged or shown any regard or concern for the escalating problems being caused for people as the gulls reproduce uncontrolled. The number of gulls is set to '*double*' every year unchecked, unless the authorities intervene.

Our elected representatives have recently been informed of the situation and a couple have started to ask questions on our behalf. The campaign people will be issuing updates on what is happening over the summer, and expect a long arduous campaign. Any solution will be complex and expensive, the more-so the longer things go on.

So the purpose of this note is to ask you if to think there is a problem that needs attention, would you call in to one of us to sign the petition, or just sign the declaration on this sheet and drop it back into one of our houses.

If you would like detailed information about the whole campaign, please also tick the include your email address, as that is the only feasible way to share information with everyone at present. If you do want to record your agreement with his proposal, you can sign it and drop it back to any of us following

I/we of number _____ XXXXXXXXX estate hereby declare that I/we agree that there are sufficient problems with seagulls in our town and districts to warrant appropriate, urgent attention by the relevant authorities – before matters get even more out of hand. **Signed:**

1. _____
2. _____

2.

community support

all sectors and all national and local public representatives

10.

This is a copy of the signed and witnessed cover sheet for the Balbriggan Community petition carried in May-July 2016, and photographs of the signed petition documents, when assembled it was about the size of a phonebook:

May-July 2016

Campaign Petition – gull issues, Balbriggan and Districts

We undersigned canvassed for support, for the petition proposal attached overleaf, in the following housing estates and residential areas in and around Balbriggan during the months May-July 2016: The total area covered is over approx. two square miles. We know there are identical issues in the outer-ring estates e.g. Westbrook, Moylagh, Breacn etc. that were not covered by this canvass.

Hampton Cove	Fancourt Heights
Chapelgate	Fullam Terrace
Bath Road	Clonard Street
Lambreecher	Mount Rochford

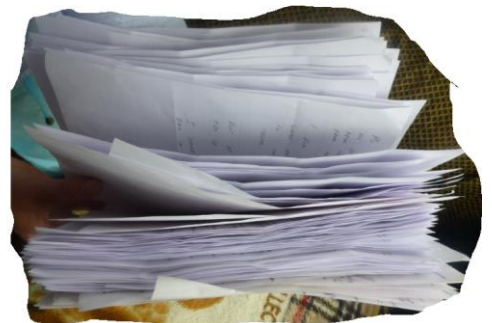
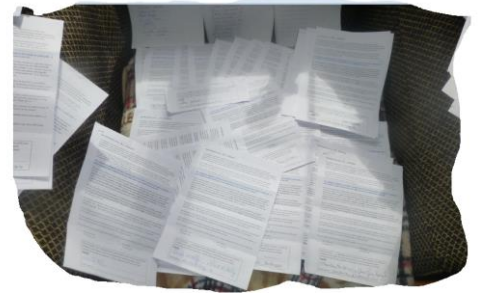
In summary form, the most common reported comments and issues with gulls in very large numbers, across the estates (applicable for the past 2-3 years) were as follows:

- Serious aggression from gulls, attacks on people, children, pets; very intimidating for elderly;
- Young Children, toddlers, babies in buggies/pram unsafe in their own gardens all summer
- Parents report their schools are keeping children in from the schoolyards for fear of injury by gulls who forage aggressively in large numbers if food is present
- Constant very loud noise 24/7; is a big issue for workers, PSV drivers, truck drivers; reference was made to 'drowsy' driving guidelines and instructions on the RSA website
- Destructive, very expensive damage to solar panels, roofing and insulation
- Blocked gutters from nest detritus, dead chicks, rolling eggs
- Very high levels of (faecal contamination) all around houses, bikes, outdoor toys; cannot put out laundry to dry due to "filth from gulls"
- Cannot have food outdoors due to harassment from foraging gulls, e.g. bar-b-que, picnic
- Gulls entering houses/kitchens – not afraid of people, defecating everywhere
- Predation of domestic hen chicks (one case)
- General comment would be that numbers of gulls ~~at~~ ⁱⁿ estates have shot up, they are not afraid of people and daily life is considerably marred now for the whole summer

The overwhelming view of people was that things are way out of hand for some time now and action is needed. We are willing to be contacted for verification purposes, if required, through the campaign committee.

<i>Peadar O'Kelly</i>	<i>Don Costigan</i>	<i>Laura McKenna</i>	<i>Alanna Carroll</i>
<i>Tommy Everitt</i>	<i>Margaret Costello</i>	<i>Anna Cullen</i>	<i>Dessie Tolan</i>
<i>Ursula Nisbitt</i>	<i>Tom McCabe</i>	<i>Gerry Newman</i>	<i>John Keogh</i>

Thomas Griffin, on behalf of our committee



11.

CiB asked DCHaG if they would acknowledge the photographed form (above) of the petition and the Department did not reply. CiB then provided full copies of the petition to the Minister's Office and to the Secretary General's Office.

12.

Personal letters from businesses and a school were sent directly – i.e. not by CiB - to DCHaG and FCC in May-July 2016. These were not acknowledged by DCHaG until December 2016 when CiB indicated intended escalation of the campaign by the TDs to the Minister's Office. FCC acknowledged all of those letters immediately and formally by return post when they were received.

2.

community support

all sectors and all national and local public representatives

13.

Of necessity in the considered views of CiB and the wider community and of all of the public representatives, and in the absence of requested clarifications from DCHaG, the campaign was continued after the Derogation was published. This was due to what are regarded as serious deficiencies in the pilot viz. a) the 'public health' part of the EU Derogation criterion was not recognised by the Department, b) the community retains doubts about the future intentions of DCHaG in relation to the Derogation given the campaign experience, and c) the absence of any involvement from FCC in solutions.

14.

In May 2017, the three Balbriggan Councillors lodged a Council motion calling on FCC to write to DCHaG and to cc the DHPLG – i.e. FCC's line Department. After the Summer recess, the Council motion (copy following) was passed in October 2017:

THURSDAY 12TH OCTOBER, 2017, ITEM NO. 81, GULLS

Motion: Councillor T. Murphy

“That this Council, in the context of: a) the recent Declaration-made by the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs (DAHRRGA) - under the relevant National and EU Birds Directive Derogation that caters for protection of public health and/or public safety - and that allows the removal of gulls' nests (and eggs if present) in Balbriggan and its districts, b) the possible extension of this Declaration to other areas from 2018, and

c) the review of the EU Derogations process that is scheduled for 2018.

Writes to DAHRRGA recommending that: a) National guidance on best practices in minimising and deterring nuisance and other negative impacts from urban gulls is prepared and published for both public areas and private buildings and also made available to the general public and relevant authorities, (DAHRRGA have advised that a public consultation phase will occur as part of the 2018 Review). b) In areas where removal of nests (and eggs if present) is deemed to

be appropriate, that serious consideration is given to providing a publicly funded nest/eggs removal service, consistent with existing best UK & European practices under the same Birds Directive Derogation for protection of public health and/or safety, thus ensuring that consistent

standards, accurate data, and effective monitoring are inbuilt in a managed service for both important conservation purposes, and also to mitigate the serious risks to anyone undertaking this work on an ad hoc basis without appropriate training or safety measures. c) DAHRRGA should engage with the Department of Housing, Planning, Community & Local Government (DHPCLG&A) and the Local Government sector in the consideration of these recommendations, and that the correspondence recommended above that is to be sent to DAHRRGA be also formally copy-circulated by the Council to the appropriate officials in DHPCLG&A.”

Report:

If the Motion is passed it will be sent to the office of DAHRRGA and DHPCLG&A for their attention

2.

community support

all sectors and all national and local public representatives

15.

That motion is historic in that, for the first time, a Local Authority based on evidence presented by a local community, accepted de facto the threat to public health and/or safety from urban gulls. It also effectively endorsed the community's efforts in pursuing the issue. This initiative was greatly appreciated in the community; however it is necessary for FCC to engage in solutions now. FCC had acknowledged in writing to CiB in June 2016, and in the May 2017 Council meeting that this (gull) issue is not just in Balbriggan, but also in Skerries, Howth and wider around the country. The above motion was acted upon immediately by FCC and a letter concomitant to the motion was sent to DCHaG in October 2017. At the time of submitting this Report, CiB is waiting to be advised by our Councillors as to whether DCHaG has replied to FCC's letter.

16.

Also at the time of submitting this Report, the Balbriggan Councillors have tabled a further motion intended for the Council's December 2017 Area meeting. That motion calls on FCC to now write to nominated Councils and Municipalities in the UK, France and The Netherlands asking if they would share information and pertinent advice and experience regarding their handling of similar urban gull issues. The nominated foreign Councils in this motion all have long-established, progressive initiatives in place for handling urban gull issues in their affected regions – for reasons of public health and safety. CiB believes that action by FCC on this motion and anticipated replies will augment and further validate the existing evidence. This is a copy of this next Council motion:

That FCC write to the UK and EU authorities listed below to ask if they would be in a position to share information and advice regarding their programmes for handling of urban gulls issues. If you (each Council/Municipality approached) are in a position to assist us on this subject, topics about which we are seeking advice and information include:

Approaches taken to identify and quantify issues and impacts thereof, communications with community sectors (residential, business, schools, clubs, institutions et al.)

Interaction on policy, legislation, EU compliance with other relevant Government Departments and Agencies (Wildlife Services (Licencing), Health, Safety, Agriculture, Veterinary)

Funding, resource management, planning, monitoring, compliance, recording and reporting

On specific aspects of programmes (community co-operation; site targeting; access issues; repeat treatments; cost management; efficacy)

scaring/barrier deterrents (site challenges e.g. scale, cost, efficacy)

nest and egg removal schemes (contract services vs. 'in-house'; data capture and reporting; cost sharing?)

controls on food waste; human behaviours – e.g. discourage feeding by people; publicity; reporting; enforcement.

Current and future plans for dealing with escalating gull issues

AND that these FCC letters should be cc'd to DCHaG and DHPLG.

Councils identified for correspondence are Hereford, Bath and Dumfries in the UK, Calais in Northern France, and Leiden in Amsterdam, Holland.

17.

2.

community support

all sectors and all national and local public representatives

CiB believes that this section of the Report demonstrates profound support for the Balbriggan campaign— i.e. it is sustained community-wide, and from all public representatives. It also demonstrates that a reasoned, measured, thorough, transparent, patient and evidence-based approach has been taken by the community in describing the problem to the civil authorities and in garnering that level of support.

18.

Elsewhere in this Report, the need for continuance and indeed up-scaling of the Derogation is explained, Our community urgently needs FCC to engage in a solutions phase because – assuming new resources and public tendering will be significant issues – there is no time to spare against the start of the next breeding season in Spring 2018 and the expected renewal of the Derogation on 1st May 2018.

Our three Councillors have been working with us to these ends since the 2017 Derogation was implemented.

19.

Our five TDs continue to work with CiB towards the formal up-scaling by DCHaG of the 2017 pilot to a comprehensive Derogation that fully recognises all issues and that receives appropriate operational support on a best practices basis from FCC.

21.

CiB are asking the civil authorities to respect the legitimate concerns and needs of our community. The Derogation control measure being sought is the prevalent, **non-harm** measure across the UK and Northern Europe under the Birds Directive:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0147&from=EN>

Article 9

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;

- *This Derogation has been widely used in Ireland for several species for many years*
- *Direct precedents for herring gulls are widespread across the UK and Northern Europe*
- *Spikes and wires and fake hawks do no work against determined gulls in colony situations*
- *The prevalent non-harm control measure is nest and egg removal to frustrate breeding and make the gulls move away from people.*

2.

community support

all sectors and all national and local public representatives

22.

Incontrovertible evidence submitted from our community – summarised again in this Report - and from widespread international sources shows that the full Derogation criteria viz. public health and safety are warranted, for serious reasons.

23.

CiB is also asking the civil authorities to acknowledge and respect the level of community support for the actions being sought, and to respect the significance of the sustained unanimous support from all of the elected national and local public representatives for our community.

3a.

usage statistics and summary analysis

sampled data, Derogation 2017.18 Schedule 2

1.

Sampled usage data from the Derogation and summary analysis in this Section of the Report represents a best endeavours approach from the Balbriggan community.

2.

The figures in the table below were collected from an area roughly 15% of the size of the zoned area in the Derogation Declaration (Schedule 2), i.e. the area petitioned in Summer 2016. It comprises eight estates, residential and commercial parts of the town centre, and a number of businesses and institutions. The figures represent nest and egg removal interventions that were witnessed by or reported to CiB by people who availed of the Derogation, the original petition carriers, and Residents' Association committees.

3.

To the knowledge of CiB, the other 85% of the zoned region not represented in these figures also has issues with gulls however no intervention data is available as CiB had no means of repeatedly covering such an area over the entire egg-incubation period. Unreliable or hearsay reports of interventions were not included in the statistics.

4.

Statistics are shown in columns as 1st, 2nd and 3rd interventions, and in rows by location.

Nest/Egg removal interventions	1st intervention		2nd Intervention		3rd intervention	
	Nests	Eggs	Nests	Eggs	Nests	Eggs
Totals	99	254	59	123	20	22
Nest/Egg removal interventions	1st intervention		2nd Intervention		3rd intervention	
	Nests	Eggs	Nests	Eggs	Nests	Eggs
Town Centre sites 1	16	24	7	11	3	2
Town Centre sites 2	8	23	5	14	2	5
	8	16	4	9	?	?
	6	16	?	?	?	?
	8	21	4	10	2	1
	8	23	7	?	?	?
Town Centre Sites 3	5	15	5	10	?	?
Residential Sites 1	10	30	7	18	5	6
Residential Sites 2	3	9	3	9	1	2
Residential Sites 3	5	15	?	?	?	?
Residential Sites 4	3	9	2	5	?	?
Residential Sites 5	4	12	4	9	2	3
Residential Sites 6	15	41	11	28	5	3

5.

A basic extrapolation gives a clear pointer to the scale of the problem “not just in Balbriggan, but in Howth, Skerries, Dublin and wider around the country” to quote a senior FCC official speaking at a full Council meeting on 9th May 2017 where the potential scale, complexity, cost and “who pays?” issues were all raised.

3a.

usage statistics and summary analysis

sampled data, Derogation 2017.18 Schedule 2

6.

Removed nests were often in contiguous house/building clusters per examples in the case studies in Section 3b. Some 2nd and 3rd intervention cells are blank because removals of rebuilt nests could not all be monitored.

7.

The total number of interventions in the full zoned area may have been much higher than our sampled figures because of the limited amount of the zoned area we could cover and also because many people and businesses remain reticent on the issue.

8.

In assessing the data from an area just 1/7th of the size of the full zoned area, it should be noted that very long-standing policy in DCHaG – for twenty+ years – requires anyone with a wildlife issue to seek an appointment for a Ranger to visit the location, inspect the circumstances, give advice, report back to the Department for adjudication in line with the legislation, and for that adjudication to be posted out to the applicant saying what can be done about the issue. There is one Ranger for all field duties for all wildlife species in Dublin Fingal North, this process can take 6-8 weeks, and the incubation period for gulls' eggs is 30 days. It is already officially acknowledged that the gull problem is throughout Fingal North, into Dublin City and wider around the country.

9.

Summary Analysis:

- the number of interventions reported in just 1/7th of the zoned area clearly points to the scale of the problem in Balbriggan and its districts;
- a basic extrapolation infers that DCHaG has enough information to confirm the need for the 'general' form of the Derogation piloted in 2017. This is further evident when you include "Skerries, Howth, Dublin City, and wider around the country..." as acknowledged by FCC; it is imperative that gull issues in these areas are properly examined as part of the Review scheduled for early 2018;
- the traditional *case-by-case* process taking 6-8 weeks per case has no practicable role in high-volume scenarios; the meticulous rigour of that *case process* would clearly provide diligent protection for species in extremis;
- urban gulls are acknowledged by DCHaG as not being in extremis, and the nest and egg removal Derogation measure is a non-harm measure that forces gulls to breed away from people and hopefully, with persistent use it will encourage gulls to revert a health fear of people and living and breeding in their natural habitat;
- incorrect media statements issued when the Derogation was announced meant there was widespread confusion in the community regarding FCC (non)-involvement in the solution; in many areas outside of the petitioned area people were wrongly under the impression that FCC was "doing the work"; and in many areas chicks hatched and it was then too late to make interventions;

3a.

usage statistics and summary analysis

sampled data, Derogation 2017.18 Schedule 2

9. contd.

- areas where the Derogation was not availed of included older estates with elderly folk who did not know about it and/or had no means of availing of it. CiB received many calls asking about “where is the Council in all of this?” and “next year?”;
- CiB is aware of cases where people with no service option cleared nests themselves; in one case a 66-year old man removed a nest from his roof and also from a 70-year old neighbour’s roof when he asked to borrow the ladder. removing a gulls nest was acknowledged by FCC in its press statements as being a dangerous operation that needs professional services;
- 254 hatchings were prevented in an already high-density local colony and the usual levels of noise 24/7, aggressive foraging, attacks, damage and extensive fouling that from 198 adult gulls and a potential 254 extra chicks were *displaced*;
- the measure seemed to also displace groups of juvenile non-breeding gulls i.e. when adult pairs were prevented from nesting in an area they departed and they were followed away in some cases by groups of juvenile gulls;
- emails and calls acknowledging the improved situation in treated areas were received throughout the summer;
- positive reports received from businesses appreciated a welcome reduction in issues affecting staff and customers, damage, fouling, aggression and noise;
- this Report makes it clear in the view of CiB – and indeed consistent with statements published by FCC and their October 2017 letter to DCHaG - that managed professional services are needed for this work – emulating best practices in our neighbouring UK and other EU countries;
- There were many reports and daily evidence from June through August of unprecedented numbers of fledgling gulls seen as ‘road kill’ in the town centre, on link roads, in housing estates – five on one day in one estate and three in a shopping centre car park in one day; this is another patently clear indicator of the explosion in the urban gull population.

10.

CiB believe that this Report on the usage of the Derogation and the case studies in the following Section of the Report transparently validates both the urgent need for the Derogation and the need for an up-scaled version of it for the future until the worst of the negative impacts of urban gull colonies on communities are reversed and the overall problem is kept under control with certainty.

11.

The Balbriggan campaign evidence and this usage Report fully concur with and echo the evidence across the UK and Northern Europe where the nest and egg removal Derogation, for reasons of public health and safety, has been in widespread, year-on-year iterative use for years in regions impacted by this problem.

3a.

usage statistics and summary analysis

sampled data, Derogation 2017.18 Schedule 2

12.

On another issue, in recent years, large flocks of herring gulls can be seen at dawn foraging on (and defecating on) green amenity spaces and sports pitches. At sowing and harvesting times flocks of gulls are following tractors in fields to the virtual exclusion of traditional species. ‘White carpets’ of gulls can be seen regularly loafing (and defecating on) human food-crop fields – far inland at Balrothery, the Naul and Walshestown. Similar sights can be seen throughout Dublin e.g. pitches at Northside, green spaces near Beaumont Hospital, Fairview park – to quote a Birdwatch Ireland (BWI) expert on an RTE Drive Time interview (attached), “they are everywhere”.

13.

Two recent Irish scientific studies and several international studies (see Section 5 of this Report) consistently, specifically and directly implicate urban gulls in Anti-Microbial Resistance (AMR) dispersal with a potential ‘vector’ role, and clearly flag urban gulls (and geese) loafing and resting behaviours on public spaces, amenity areas and food crop fields as a potentially serious public health concern due to profuse AMR-laden defecation. As AMR-laden defecation on our amenity areas, our beaches and our crop fields is cited by scientific evidence as a potentially serious public health concern, simple logic dictates that the inherent risks must apply at least equally if not more-so to our homes, schools, play and food areas because of more immediate proximity.

14.

As a further really startling indicator of the scale of the urban problem, below we compare the total ‘first intervention’ nest and egg removals from the very small part (15%) of the zoned area sampled in the Balbriggan Derogation with the national total of rooftop nests as recorded in the Seabird 2000 census conducted in 1998-2002 (BWI).

15.

Seabird 2000 was the last full census of gulls in Ireland and its data continues to underpin DCHaG policy today, except in the Balbriggan pilot. A “90% depletion in herring gull numbers” claimed after Seabird 2000 is still quoted by DCHaG in justifying policy and procedures even though that depletion claim takes no account (BWI) of the urban gull population explosion since 2002. Also, as described earlier, the case-by-case procedures for gull issues that are operated by DCHaG are over twenty years old, and significantly pre-date the acknowledged urban gull explosion. These facts were confirmed to CiB by DCHaG in a meeting on 8th December 2016. The following table was provided to CiB by BWI in December 2016 as being an excerpt from Seabird 2000 statistics tables.

Appendix 1. All figures are 'Apparent' (i.e. not corrected for Herring Gull mortality)

Roof-resting gulls – 3 surveys

	Republic only	All-Ireland
1976	14	14
1993-95	145	217
1999-2002	209	217

Coastal gulls

		In Northern Ireland	All-Ireland
1969-70	43,710	16,002	59,712
1985-88	15,255	17,561	32,816
1999-2002	5,411	709	6,120*

(BWI) there were 209 nesting pairs of herring gulls recorded on rooftops in the Republic of Ireland in the Seabird 2000 census.

3a.

usage statistics and summary analysis

sampled data, Derogation 2017.18 Schedule 2

16.

'First Intervention' figures for nests and eggs removals under the Balbriggan Derogation (i.e. not counting rebuilt nests) from an area just 15% of the size of the full zoned area of Balbriggan were as follows:

Nest/Egg removal interventions	1st intervention		2nd intervention		3rd intervention	
	Nests	Eggs	Nests	Eggs	Nests	Eggs
Totals	99	254	59	123	20	22

99 herring gulls nests were removed from rooftops in a small area of Balbriggan in 2017.

17.

Therefore, the number of nests removed from a small part of the zoned problem area in Balbriggan equals almost half of the national total of rooftop nests recorded in the national gull census in 2002. And in that small area for which nest removal figures are provided above, CiB believe that there were as many or more nests left undisturbed.

18.

A basic extrapolation from the ninety-nine nest removals from the relatively small treated area to the rest of Balbriggan's districts, and to "Skerries, Howth, Dublin city and wider around the country" (FCC) must surely ring alarm bells at this stage.

19.

There is major concern in the community that normal gull ecology, and our documented community experience, means four generations of young gulls are due to return to breed year on year to where they were hatched. And in an expanding colony, other adult pairs are also very likely to seek to occupy cleared areas. Consequently people are very anxious that this non-harm control measure remains in place each season until gulls have re-learned to live and breed a safe distance away from communities.

20.

The long-term beneficial effects of the Derogation (254 hatchings prevented) will have its true displacement impact on breeding locations in four years' time subject to continuation of the Derogation; conversely, a failure to continue the Derogation will see next years' four-year olds returning to the cleared area to breed, and so on after that, meaning the 2017.18 Derogation will have minimal effect long-term.

21.

The combined import of the Balbriggan data, the scale comparison with the Seabird 2000 census of rooftop nests, and known gull ecology, indicates categorically that an iterative (year on year with certainty) general licence for nest and egg removal – consistent with international precedent - is needed to bring this problem under control.

22.

CiB believe that managed services run by Local Authorities are necessary to address the many issues for all urban settings, viz. residential, schools, business, clubs etc. By managed services we mean 'professional, insured, authorised, properly equipped,

3a.

usage statistics and summary analysis

sampled data, Derogation 2017.18 Schedule 2

23.

access-assured, transparently accessible by communities, documented and monitored services. There are many such service models across the UK and Northern Europe and these have been notified to DCHaG and FCC by CiB. And FCC has in fact called for such to be considered in the letter written to DCHaG in October 2017.

24.

A closely managed approach would also cater for legitimate bird conservation concerns, ensuring use of best practice standards, collection of accurate statistics, and non-disturbance of hatched birds. It would capture an evolving, accurate macro view of the problem, and would identify hot-spots, and successes and failures of the policy. Only such an approach can match international best practices and also achieve requisite compliance with the legal requirements of the EU Birds Directive.

25.

Managed services would need year on year certainty of the Derogation. The Annual Declaration on May 1st used by DCHaG is untenable in the circumstances. It would make it difficult if not impossible for planning, budgeting, dependable contractual agreements and commercial arrangements, publicity, and co-ordinated community engagement during the intervention window viz. egg incubation from April to June.

26.

On foot of the Balbriggan Councillors' first motion documented above, FCC wrote to DCHaG in October 2017 calling for national leadership on the issue and for the consideration of publicly funded services to address the problem. Hopefully that pragmatic initiative will engender concerted attention now from the civil authorities.

27.

Businesses are averse to extraneous cost and risk and are sensitive to negative publicity. In CiB's experience each of these factors are causing businesses to put up with serious gull issues including health and safety compromises (staff and customers), serious damage to plant, product damage, extensive fouling, repair and maintenance restrictions and potential reputational damage.

28.

Given very high urban gull numbers in some areas and colonisation behaviour, it is untenable for business to bear escalating impacts indefinitely. A failure to act now will inevitably lead to more drastic solutions being needed. Targeted, systematic, nest and egg removal is a proven viable, low impact strategy. Continuing to ignore and/or diminish the issue will prove to be a foolish choice as gulls multiply un-resisted.

29.

CiB emphasise that based on our research and direct engagement with businesses, it would be most unwise to maintain a blind eye to this problem. CiB are directly aware of several colonies on business sites at which no interventions were made under the 2017.18 Derogation, but at which interventions are needed.

3a.

usage statistics and summary analysis

sampled data, Derogation 2017.18 Schedule 2

30.

Evidence has been provided of the impacts on schools from viz. aggressive foraging, fouling, serious damage and constant noise. As cited in the UK evidence, large, established colonies on business and industrial sites are most likely contributing to the foraging issues in town centres and at schools.

31.

In our engagement with people and businesses, institutions and clubs CiB encountered a general non-awareness of DCHaG's role in the context of the urban gull issue. Few people have heard of or understand what is meant by a "Derogation". Many who did have a view on the issue were under the impression that "this is all controlled by the EU isn't it? This degree of low, fuzzy public awareness will need to be taken into account in devising the planned 'public consultation phase' of the Review if it is to be effective.

32.

In an absence of leadership from those in authority, people themselves eventually lead. If the law or its interpretation and application is socially unacceptable, and the consequences of that situation cause serious negative impacts on communities, people eventually object, resist and demand change. And that is happening now.

33.

CiB are anecdotally aware of several instances – farther afield than Balbriggan – of people taking matters into their own hands and removing gulls nests for the past few years out of sheer frustration, out of fears for health and safety, and acting prudently in responsible duty of care situations.

34.

Since May 2016, the Balbriggan community has sought to avail of the proper official, legal and democratic channels to have this problem addressed openly and transparently. A reasonable, patient, evidence-based and determined approach has been taken, aiming to protect our community from a serious threat.

35.

At the time of submitting this Report, the civil authorities have had over eighteen months to assemble a concerted response towards solutions. Current indications are that DCHaG will award a contract shortly for the Review of the Derogations process – a project expected to take five months. Previous statements by the Minister and the Department said the Review is expected to finish in time for the May 1st 2018 Derogation Declaration. As things stand, no one knows whether or not the Derogation 2017.18 will be continued, rescinded or up-scaled, and there is no basis on which either citizens or FCC could sensibly make plans or preparations for the 2018 Derogation.

36.

Our community has a legitimate expectation that this Report and its evidence-based premises, and the history and integrity of their campaign to date, exemplified by the sustained and unanimous support of their political representatives at national and at local level, will now influence and expedite a necessary upscaling of attention to this issue from the relevant civil authorities in good time for Derogation 2018.19.

3b.

usage case studies residential, business and institutions

1.

The people affected by the case studies set out below are adamant that the truth regarding the severity of gull issues impacts on daily life and the stress endured should be brought to public attention and thereby influence and shape policy.

2.

CiB submits the following case studies as taken directly from residents and businesses and institutions. CiB expects to be in a position to arrange meetings in confidence between DCHaG, the Review Project Team and the people behind these case studies, if that would be useful.

3.

Case Study 1 - Residential.

In this case there were three nests on one semi-detached house, one nest on the next semi-D block and three nests on three houses in a row behind. This seemed to be an extended gull family, as there were up to fifteen additional juvenile gulls (with speckled head and neck plumage, not breeding but otherwise adult-like) that stayed around every day (and night) until shortly after five of the nests were removed for the third time. The noise 24/7 and faecal contamination had to be heard and seen for the impact to be understood. A big male of this 'colony' routinely came down into a neighbour's garden and attacked the family pet and stole its food; this male gull entered the kitchen of the houses four times and defecated throughout the kitchen when attempts were made to evict him. Video evidence of this incursion is available, and two stills from the video are in Section 10, Photographs, page 89. This 'colony' started in 2015 with one nest, and spikes were erected when the nest was finished. In 2016 the gulls broke, bent and built on top of the spikes and were left undisturbed again. Four sets of spikes were erected before the breeding season this year and the gulls bent and broke them again, padded them with foliage and build on top of them – see Section 10, page 90. The nests were removed (3 times) this year under the Derogation and the adult breeding pair moved away, followed by the large gang of juveniles.

4.

Case Study 2 - Residential.

In another residential case there were three nests on the garage, two nests on the house roof, and another nest on the adjacent semi-detached house's side of the chimney – i.e. six nests in total on one residential property. The lady of the house has been afraid all summer in the past three years to go into the back garden, and the man of the house was attacked and injured in the garden. The level of faecal contamination around the house and footpaths outside was disgusting for months. The noise was horrendous for months. Last summer, many chicks were blown off the roofs onto the road by high winds before they were ready to fly and as they were walking around the estate for two weeks, people and children playing were regularly attacked by the gulls. These conditions should not belong in a residential housing estate.

3b.

usage case studies residential, business and institutions

5.

The six nests were removed under the Derogation and several nests on neighbouring houses on that road were also removed. The reports back were that people can sleep at night through the summer instead of being awake as early as 3am every night for months, there is far less fouling and children and grand-children can play in their gardens and have normal summer treats like a family barbeque without constant aggressive foraging by gulls. People with children and grandchildren regard the oft-stated line that “gulls are only aggressive when protecting their chicks” as inane. They forage increasingly aggressively (as evidence later in this Report) and they attack pets to access their food, and there is territorial aggression in high-density situations.

6.

Human parents will become justifiably aggressive towards gulls to protect their children and grandchildren if/as necessary, and they shouldn't have to be protecting them from large numbers of dangerous, wild creatures in immediate proximity to homes every day for several months of the year. Persistent nest and egg removal makes the gulls move away unharmed and that is a fact.

7.

Case study 3 – small Business.

This small business suffered major roof damage and that caused closure and loss of business for two and a half days in 2016. Over the June Bank holiday there were two days of torrential rain that washed debris from nests into the gullies and blocked the down-pipes. The rain built up like baths on the roof and burst through. The problem was caused by ‘warrens’ of gull nests on the old hipped roof complex that covers the premises and several adjacent premises. There are some photographs taken under duress showing the size of these nests in Section 10, page 86 The proprietor wrote to DCHaG in June 2016 and did not receive an acknowledgement until December 2016. A senior manager from FCC called to this premises in Spring 2017 and heard the description of the issues first hand. Customers were attacked entering and leaving this business through May – July. This year, eight nests and 21 eggs were removed in the first intervention, and second and third interventions were required. The issues experienced in recent years were eliminated; in particular there were no instances of blocked gutters, flooding, and swooping attacks on customers and constant fouling was greatly reduced; also persistent roof damage by gulls was stopped. Gulls are still hanging around now (Winter) and the measure will be needed for a number of years as young gulls return to breed where they were hatched.

8.

Case study 4 – large Business

The proprietor of this pub restaurant business wrote a number of times to DCHaG from June 2016 through to Summer 2017. The issues impacting the business included heavy levels of fouling, mass aggressive foraging by gulls, and attacks on staff and customers to an extent that caused the business to close their outdoor summer restaurant in 2016. When dense rows of bunting were erected over the dining area,

3b.

usage case studies residential, business and institutions

9.

gulls systematically poop-bombed the tables whenever food was served causing people to get up and leave, and the gulls would fly down and land on the path, walk in and hop up on the tables and take whatever food was left.

10.

Female staff members were afraid to go out into the serving area because of the gulls' aggression and custom was destroyed. This year, thanks to the Derogation, eight nests were removed (three times) and the gulls moved away. The summer restaurant was able to be re-opened. A couple of nests were overlooked down at the back end of these very large premises and chicks were hatched before those nests were noticed, so they were left undisturbed. This year, the proprietor reported that "fouling was reduced to manageable hygiene levels and there were no serious issues for staff or customers", and this business has stated that this measure is needed in future years, with certainty, until the gulls have learned to stay away.

11.

Case study 5 – a very large Business

This is a major business that has constant issues with large numbers of gulls – including aggression towards staff, customers and contractors engaged to repair serious damage (€000s) from gulls on the massive roof of the premises. There are photographs in section 10 pages 87 and 88. This business, indeed most businesses, would require a confidential communications channel for commercially sensitive reasons in order to engage with the Review Project Team's investigation. The General Manager of this business spoke in confidence about the issues with a senior manager from FCC who visited the company in Spring 2017. CiB are aware of a number of businesses with similar gull issues.

12.

Case study 6 –Schools

DCHaG received letters from a school Principal in 2016, from May through to Spring 2017. The letters specified both health and safety concerns for the children from constant aggressive foraging and extensive fouling by large numbers of gulls, and recurrent major damage (€000s) for three years in a row to the school's three pre-fabricated classrooms putting them out of commission for the Autumn term each year.

13.

DCHaG only acknowledged this school's June 2016 correspondence in December 2016 when it was clear that political escalation of the campaign to Ministerial level was underway. The school was not included in the zoned area of Schedule 2 of the Derogation and when CiB queried this decision DCHaG said "the school can apply for a licence" – missing the point, gulls are not nesting on the school's single story roof, they are nesting in large numbers in the housing estates that surround the school, and foraging aggressively at the school when the break bell rings. And this problem is common in many schools.

3b.

usage case studies residential, business and institutions

14.

CiB informed DCHaG that parents of primary school-children in Balbriggan reported that schools had the same yard restriction policy as the Skerries school because of aggressive foraging by gulls. Parents reported that children are pretending to teachers that they are finished eating their snacks so that they can get out into the yard sooner.

15.

The Loreto Secondary school in Balbriggan had an entry to the Young Scientist competition in 2017 dealing with aggressive foraging by gulls, constant distracting noise and heavy fouling in their school.

16.

CiB halted contact with schools in Autumn 2016 due to ongoing and sensitive Industrial Relations matters in schools at the time. We had thought (wrongly it transpired) that more than enough information about schools' issues had already been provided to DCHaG. Thousands of children are affected by this issue from as early as March right up to the summer break. There is significant emerging evidence as to the wider impacts on schools in Balbriggan and its districts. In addition, it has been advised that this problem is evident outside of our district. CiB is convinced that the school issue is one that warrants immediate attention to protect and safeguard children. CiB recognises, in fairness to the former Minister DCHaG, she did acknowledge the public safety aspects of the issue in statements after she signed the Derogation. This problem is much wider than the zoned area in Schedule 2 of the Derogation, it also includes a serious public health dimension, and the pilot therefore needs to be up-scaled to reflect these facts.

17.

Case study 7 – large Institution in Balbriggan

This institution caters for hundreds of children throughout the summer school holidays. It has had a serious gull problem for the past few years. The heavy fouling by gulls was raised as a health and safety issue by an Environmental Health inspector. This year 5 nests and fifteen eggs were removed in the first intervention and a very significant drop in issues resulted. Two other nests hatched chicks during the caretaker's holidays and these were left undisturbed. Again, the caretaker commented that this measure will have to be repeated for a few years to prevent the gulls from coming back.

18.

Issues as described above in the case studies are commonplace where there are high density urban gull colonies – UK and Northern European evidence referenced in this Report is consistent in that respect. The details described in the Dutch Supreme Court case described later in this Report are consistent, as are the multitude of media reports across the UK and the very illuminating Hansard Report of the UK National parliament debate on gull issues held in Westminster in February 2017.

3b.

usage case studies

residential, business and institutions

19.

A family home represents not just the biggest investment in a family's life-time; it is the place for ordinary family life, sleep, comfort, enjoyment, safety, play, use of the garden, maintenance and social interaction with neighbours and friends. **Un-resisted**, expanding urban gull colonies are badly marring family life in many communities for several months through late Spring and summer every year. The same issues are impacting on schools, clubs and businesses and this situation will continue escalating rapidly until proper intervention is forthcoming from the civil authorities.

20.

This problem is not static as gull numbers 'explode' in the urban setting. If escalation is allowed to continue unchecked, what do the civil authorities expect to happen?

4.

summary impacts on communities

urban gull issues

1.

These issues and their impacts were testified in the petition raised through the summer of 2016, and many issues were also notified directly by people, businesses and schools to DCHaG. The signed petition cover sheet and a copy of the full proposition put to people and businesses by are shown in Section 2 above. Note that the petition carriers signed a declaration that they are willing to be contacted for verification purposes.

2.

The issues are summarised again in this section of the Report.

3.

On the 'noise' impact from gulls, CiB are conscious that unless you experience it, you don't understand it. So we have set a challenge for anyone reading this Report.

4.

CiB has attached an mp3 recording of herring gull calls; it was made at standard ambient input volume. The challenge is that you send this mp3 to your smart phone, set it as an alarm tone for 3am every morning and leave your phone on your windowsill in your bedroom. See how many nights you can bear it. And then imagine it every night for months on end, and for hours on end, and all day every day. And then imagine you drive for a living – maybe a HGV or a PSV, or you operate heavy machinery that also requires full concentration all day, or you have Junior Cert or Leaving Cert children in your family awake in the small hours every night from as early as March right through to their exams, or you are a shift worker sleeping on days when high-density colonies of gulls are in full voice all day, or you just need a normal night's sleep most nights just like everyone else to be able to function. Taking this challenge should quickly give you a better insight regarding the seriousness of the noise issue.

5.

An RTE Programme dealing with all aspects of human sleep, its importance and the now proven very serious health implications for people with impaired sleep or regular sleep deprivation aired on Weds. 22nd October 2017. The Professor from the Department of Human Health and Performance at DCU and several other senior medically qualified contributors to the programme were crystal clear on this subject. Sleep deprivation is a major health hazard for people subjected to it and depending on one's occupation, the consequences of sleep impairment is a hazard for colleagues and/or the general public. An edited down 15 minute audio mp3 from the programme are included on an MP3 attached to this report. Gull colonies screech from just before dawn (3am in high summer) every morning from as early as March through to September. The levels of noise and the long period of impact are totally unacceptable.

6.

A Government Cabinet meeting had to move to a different office in July 2017 because of the cacophony from gulls reverberating in the meeting room. That level of noise is constant for 24/7 for months in communities with high-density gull colonies. Our schools have constant noise distraction from gull colonies from March until the summer break, and then again from September until many of the gulls move to winter roosts.

4.

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If you review the Derogation usage statistics and case studies given in Sections 3a and 3b above, and also look at the photographs in Section 10 of this Report – you might ask yourself can you think of any other species that has ever been or ever would be tolerated, in such numbers, inflicting such horrendous impacts on large communities of people all around the country? And this problem continues to escalate unchecked.

7.

List of negative impacts from high-density gull colonies:

- constant loud screeching noise 24/7 for months – March through September; constant sleep deprivation is now recognised as a serious health issue. and as the cause of 20% of serious road accidents (Road Safety Authority)
- extensive, ubiquitous, disgusting levels of faecal fouling on, living and play areas, schools, food areas, cafés, supermarkets, amenity areas and sports pitches
- aggressive foraging throughout communities (homes, schools, businesses, clubs)
- serious health and safety issues in every community setting - intimidation and fear, especially young children
- aggression and attacks by gulls, injuries requiring treatment and medication
- gulls brazenly coming into homes and premises
- major damage to property (€000s) homes, business, schools et al; causing flooding, expensive repairs, replacement of solar panels
- unable to enjoy normal use of your garden, outdoor food, young children playing, for months in the summer
- personal safety-based restrictions on home maintenance (painting, gardening, repairs, roof access; TV Aerials and Dishes cables pulled, installation and repairs delayed because workers cannot safely go onto roofs from April to June)
- attacking of pets, predation of other fauna
- fully wild, aggressive cannibalistic behaviours in close proximity to people

This list is in summary form. It echoes with all affected regions in the UK and Northern Europe, and those countries are a lot farther on with dealing with this issue than we are. Photographs in Section 10 of the Report give examples of most of the listed impacts and a clearer picture of what gulls are capable of as part of their normal wild nature. Wild behaviour belongs in the wild – not in close proximity to our families and children.

8.

The only **non-harm** method to somewhat reverse the negative impacts of gull colonies on communities is to resist the gulls by systematically denying them breeding opportunities that are too close to us. This is the lowest impact measure that actually has sufficient consequences to deter gulls. And, again it is the prevalent legal measure in regions across the UK and Northern Europe that are impacted by urban gull colonies.

9.

4.

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The above impacts summary, the Derogation usage statistics and the case studies, the scale and community-wide spread of the 2016 petition, and the individual letters sent to DCHaG and FCC through 2016 are more than enough in the views of our community and of our political representatives to elicit a concerted sustained and effective response from the civil authorities in the interests of the wellbeing of people.

10.

You will see several references in this Report to aggression from gulls. The photographs in section 10 contain ample evidence of what gulls are capable of doing.

11.

Bird conservationists claim that gulls are only aggressive when caring for chicks. This is not true. The subtle inference is that people are supposed to understand that instinct and pardon that aggression and any injury that comes from it, and this is the usual reaction of people who haven't experienced gull issues of the kind being lived with in our community. We are entitled, indeed duty-bound to protect our children and grandchildren from risk and danger, and indeed to protect ourselves as well.

12.

These are two stills from a BBC documentary where the presenter demonstrated very clearly what is meant by aggressive foraging. You can see the full video clip here:

<https://www.youtube.com/watch?v=vaGaA7J7Q-c>.

Conservationists say the gulls "do not intend to inflict injury". Is that inane statement meant to convince people to tolerate aggressive foraging and the risk of serious injury and infection, including Antimicrobial Resistance contamination from a wild bird?



These images show a foraging attack on hand-held food. Gulls also attack to the face inflicting serious injury, and sheer terror, and these attacks are now commonplace. See the recent serious Howth incident following, and the recent Irish Times letter published on the same day.



If you watch the Youtube video above you will see the suddenness and speed of the attack – there is no time to react and defend against it.

This is just one of the reasons all primary schools in Balbriggan and Skerries operate yard restriction policies – to protect the children from serious injury

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13.

Those images are real. The incident was staged by the presenter to achieve a demonstration of the aggressive nature of the foraging attack. The following article from August 2017 in Cornwall is further salient, and there are many more such reports: <http://www.cornwalllive.com/news/cornwall-news/seagull-attack-injuries-sending-more-278771>

“Seagull attacks are on the rise in Cornwall and people are getting injuries in their mouths, say pharmacists”

“However, the reality is that there are probably more people who have been attacked by them but have decided to treat the wounds themselves rather than seek the advice of a pharmacist. “We have even seen adults and young children with cuts around and inside their mouths as well as their hands where sneaky seagulls have swooped down to take their food. As pharmacists our advice is always make sure you are up to date with your tetanus jab as it’s important to remember seagulls are often picking around rubbish bins and you can’t guarantee how clean they are.

14.

The aggressive foraging evidence is here in Ireland as well. This report covered a gull attack on two young women and their children in Howth on Sunday 26th November 2017. The families were walking along the pier having some chips.

<https://www.herald.ie/news/sisters-seagull-terror-as-bird-splits-their-lips-while-swooping-to-snatch-chips-36359319.html>

*Laura Grehan (37) and Susan Farrelly (40), both from Castleknock, were at Howth Harbour at around 2pm on Sunday when a seagull swooped down and stole a chip from Ms Farrelly's mouth. Ms Farrelly suffered a cut to her bottom lip, but her sister's injury was more serious and left her mouth dripping with blood. She needed a tetanus injection and antibiotics. "As I went to put a chip in my mouth the seagull came down and put its beak in my mouth," Ms Farrelly said. "He cut my lip and I went hysterical. My sister was laughing at me, but within 60 seconds the same seagull came back and ripped my sister's whole lip. "Her lip is all swollen. It went from inside the lip. Her mouth was pouring with blood. "We think it was the same seagull because it had a big red mark on the bill." Ms Farrelly, a musical theatre teacher, said it was "like a scene from an Alfred Hitchcock movie". "There were loads of them. It was like a scene from The Birds," she said. "I suppose it was funny for us as adults, but if it had been the kids it would have been more serious." After the attack, she said they warned other people eating fish and chips of the danger and some went to finish their snacks in their cars. "It's absolutely horrific for it to happen, as much as we were laughing about it," said Ms Farrelly. "I was shocked when it happened to Susan, we thought it was just a freak thing," she said. "I've never seen anything like it."**When we phoned the out-of-hours doctor service, I thought they would think it was a wind-up. "But they said it was actually very common."***

In Section 5 below you will see extracts from a UCD scientific study of gulls in Howth confirming the presence of human-relevant Antimicrobial resistance in gulls there

4.

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Looking at the evidence in the section on AMR following, indeed the specific study of Howth gulls done by UCD, isn't it clear that urban gulls have become a serious public health problem? One of the injured mothers had tetanus and anti-biotics treatment for a serious – inside-the-mouth blood injury. The Cornwall article above describes exactly the same issues from aggressive foraging. The D-Doc told the injured women in the Howth incident that gull injuries from aggressive foraging is a common occurrence.

15.

On the same day as the Howth attack on two young families was reported, the following letter appeared in the Irish Times about another incident in Grafton street.

<https://www.irishtimes.com/opinion/letters/seagulls-and-the-pecking-order-1.3307006>

Sir, – I had a pot of tea in the newly reopened Bewleys on Grafton Street, Dublin, last week. It was a lovely experience. Afterwards, I walked towards St Stephen's Green and reflected that, indeed, "Dublin can be heaven, coffee at eleven". As I strolled, a gentleman walking towards me was eating a sandwich as he did so. Quite suddenly, a seagull alighted on the gentleman's shoulder, snatched the sandwich and soared skyward, all done in an instant. The gentleman was incandescent with rage and directed that towards the disappearing bird. Unfortunately for the seagull, the bulk of the sandwich filling was lost to the pavement during the raid. I spoke about the incident with one of Grafton Street's wonderful flower sellers. This is now a daily occurrence, it seems. Indeed the ducks in the Green have long since been overtaken. Should something be done? – Yours, etc,

This is a startling co-incidence at the end of November when conservationists say the gulls are "gone". These attacks and all of the other witnessed evidence from Balbriggan, justifiably debunk bird conservationists' claims that a) gulls are only aggressive when defending their young, and b) they are only a nuisance for a few weeks in the summer.

16.

The primary schools in Balbriggan and Skerries do not permit the children to have food in the yard at break-time because of relentless aggressive foraging by flocks of gulls – an escalating problem in the past few years since the closure of Balleally landfill. The gull issue in Balbriggan schools was the subject of a Young Scientist project in 2017.

17.

DCHaG's decision to limit the 2017.18 Derogation to Balbriggan, and to withhold the 'public health' criterion from it, is called into serious question by the evidence provided since 2016, and further by the AMR evidence in Section 5 of this Report.

18.

Our civil authorities are hereby asked, once more, to take proper account of these impacts on our community and the many serious inherent risks, and to recognise that it is unacceptable for escalating uncivilised, dangerous conditions to be imposed on communities by what is now a rampant urban pest species.

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19.

The following links show some UK locations where managed services for nest and egg removal programmes have been operation for years. Hereford's programme goes back to 2007. There are many such programmes across the UK, France and Holland.

https://www.herefordshire.gov.uk/news/article/269/successful_hereford_city_seagull_control_programme_to_continue

<http://www.bathchronicle.co.uk/news/bath-news/campaign-tackle-baths-urban-gull-56437>

<http://www.dumgal.gov.uk/gulls>

20.

Here is the Hansard Report from a National parliamentary debate on urban gull issues in Westminster on 7th February 2017

<https://hansard.parliament.uk/commons/2017-02-07/debates/AE1CEE4F-5DF9-467C-9F36-657C51315D1C/Seagulls>

21.

Here is a press release from the Royal Society for the Protection of Birds (RSPB) one week after the parliamentary debate in February 2017.

<http://www.birminghammail.co.uk/news/midlands-news/brexit-could-bad-news-seagulls-12583924>

Note that the RSPB anticipate initiation of a major cull of gulls by the British government when "Brexit has been achieved". Our civil authorities might consider where hundreds of thousands of fleeing herring gulls might seek refuge from a British cull – gulls living on the Welsh coast already forage in Wexford (Professor Peter Rock, Bristol University, gull expert, GPS tracking demonstrated this fact in 2014).

22.

CiB previously provided an Annual Report from Calais in Northern France detailing their nest and eggs control programme. The link for that report has been taken down, but we also provided the PDF to DCHaG and FCC. There are similar initiatives throughout France. Denmark has controls for "quiet residential areas" also previously notified.

23.

The Dutch control programme in three large Municipalities in Amsterdam - vindicated by their Supreme Court in August 2016 – was notified by CiB to DCHaG in August 2016. It is significant because the Dutch imported the Birds Directive into their National law. They ran several years of research to PHD level out of Leiden University and commenced their gull control programme in 2011. This was challenged successfully by the Dutch Fauna Foundation in Amsterdam District Court in 2014. The Raad Van Stadt (RVS, Supreme Court) overturned the lower court ruling and re-instated the programme for reasons of public health and safety in 2016. CiB wrote to the Secretariat of the Court and received confirmation in writing that there is no leave to appeal the decision of the RVS. Here is a link to the RVS ruling in August 2016 (Google Translate required):

<https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=88649>

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24.

CiB and all of the public representatives (national and local) for our community believe that the nature of impacts and the amount of evidence as to severity and serious risk accruing on communities is so compelling that it is incumbent on our civil authorities to assign priority and whatever resources are necessary to achieve good solutions in good time for the 2018.19 Derogation anticipated on 1st May 2018.

25.

CiB will be happy to take up DCHaG's offer to discuss this Report and to make arrangements for the Review Project Team to meet people and businesses in our community if that would be useful.

5.

antimicrobial resistance urban gulls and public health and safety

1.

CiB does not have professional qualifications with regard to Antimicrobial Resistance (AMR), nevertheless as concerned citizens we are closely attuned to the Government's stated and patently serious concerns about this issue. For this reason we have attached links to several verifiable scientific study reports below, and listed some key excerpts to assist evaluation and conclusions by the Review Project Team.

2.

This section of the Report presents recent, verifiable and extensive scientific evidence (Irish and International) that gulls – particularly urban adapted gull species due to their proximity to humans and their ecology (scavenging human waste, landfill, sewerage, agricultural and aquaculture sources et al.) - are implicated in AMR, including human-relevant *carbapenemase-producing Escherichia* (CPE) – a globally recognised major threat to public health. CPE is the one of many cited AMR threats that is stated to be “of most concern” in the Irish National AMR Plan (iNAP) launched by Ministers Harris and Creed on 25th October 2017 – link provided below.

3.

The ‘pilot’ 2017.18 Derogation Declaration (Schedule 2) licenced the removal of gulls’ nests and eggs, for public safety reasons only, in a zoned area of Balbriggan- i.e. DCHaG pointedly withheld the ‘public health’ part of the EU Derogation criterion, and confined the measure to a small part of Fingal North despite clear acknowledgements by DCHaG and FCC that the problem is throughout Fingal and wider. CiB asked DCHaG about the merits and wisdom of ‘zoning’ a public health and/or public safety measure and did not receive a reply.

4.

The EU legal Derogation Article 9 1 a) i) quoted earlier in this Report is specifically worded as being for reasons of public health and safety. This is the Derogation used in Ireland (for many species excluding gulls), across Northern Ireland, the UK and Northern Europe, under which systematic removal of urban gulls’ nests and eggs is the prevalent policy and operational practice - as demonstrated with official evidence and examples throughout the Balbriggan campaign. Here are the links to each of the UK General Licences on which, among many measures for many species, removal of herring gull nests and eggs by property owners or their agents for reasons of public health and safety is authorised without the need to apply for a licence approval:

Northern Ireland:

<https://www.daera-ni.gov.uk/publications/tpg1-general-licence-kill-or-take-certain-birds>

Scotland:

www.snh.gov.uk/docs/A1826557.pdf

England:

<https://www.gov.uk/government/uploads/system/.../gl05-birds-phs-licence.PDF>

Wales:

<https://naturalresources.wales/media/679154/general-licence-002-2016v2.pdf>

5.

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5.

CiB notified these Licences to DCHaG in July 2016, who seemed to be unaware of them at that time. DCHaG have never answered questions from CiB about why the same situation should not apply here in Ireland for the same species, for the same reasons. Furthermore, Councils and Municipalities in our neighbouring EU countries also operate 'general' licences that provide utility for the various managed contracted services in place to deal with this problem.

6.

As will be seen later in the section, DCHaG licenced a UCD study of urban gulls in Howth for AMR and received a copy of the results in early 2015 titled "AMR in Wildlife (gulls and deer) – a public health concern". CiB does not understand why the 'public health' part of the EU Derogation criterion was withheld from the pilot by DCHaG.

7.

AMR is a global public health threat of the utmost concern to society, and is the subject of strategic multi-agency high priority throughout the world. The AMR evidential material that CiB presents following is being provided as additional to the evidence already provided that has been sufficient in every EU country neighbouring Ireland to warrant a public health and safety Derogation for years under the EU Birds Directive.

8.

The EU Centre for Disease Control and Prevention (EUCDCP) is co-ordinating EU strategy and standards development in relation to AMR and the grievous public health threat that it poses. The global 'One Health' initiative is focussed on a triad of 'healthy people, healthy animals, and a healthy environment' and a core principle is that these three pillars are inextricably integrated. A 'risk prevention or at least mitigation' philosophy is paramount in strategies being devised to counter the AMR threat.

9.

The EUCDCP estimated 25,000 deaths due to uncontrollable infections (AMR) in European hospitals in 2016, the USA CDCP total was 35,000 deaths in American hospitals in 2016, and the 2016 Global estimate is 700,000 deaths per annum now.

10.

The British CMO Dame Sally Davies made the following statement on AMR in her 2017 Annual Report:

<https://www.theguardian.com/society/2017/oct/13/antibiotic-resistance-could-spell-end-of-modern-medicine-says-chief-medical-officer>

Her talk here is quite chilling: https://www.youtube.com/watch?v=2H_Ox1vVnTc

11.

The Irish National AMR Plan (INAP) was launched by Ministers Harris and Creed on 25th October 2017. It includes a clear statement by the Irish Chief Medical Officer (CMO) as to the criticality of this issue. See INAP at:

http://health.gov.ie/wp-content/uploads/2017/10/iNAP_web-1.pdf

5.

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12.

In May 2017, the Irish Government set up a dedicated Directorate in the HSE to head up and co-ordinate the work on AMR. The following is a relevant excerpt from a reply to parliamentary question 271 & 272 on 17th October 2017

In recognition of the serious and increasing threat of antimicrobial resistance (AMR) and the requirement for a 'whole of Government' approach to health issues, the Department of Health's Chief Medical Officer (CMO) and the Department of Agriculture, Food and the Marine's Chief Veterinary Officer (CVO) established a high level National Interdepartmental AMR Consultative Committee to address this issue. The Committee meets Ireland's requirements to have an inter-sectoral co-ordination mechanism for addressing AMR at the European level.

As well as work on enhancing surveillance between the health and agriculture sectors, the Committee's work in 2017 has overseen the development of Ireland's first National Action Plan on Antimicrobial Resistance 2017-2020. This ambitious 3-year Plan has been jointly prepared by the two Departments in collaboration with all relevant stakeholders and covers the use of antimicrobial medicines in animal health and agriculture, as well as human health. Following the World Health Organisation's Global Action Plan on Antimicrobial Resistance (2015), which requires all countries to have a national action plan in place by mid-2017, Ireland's draft Plan lists Strategic Interventions and Activities, responsible bodies and priority rankings of timelines for implementation.

Ireland's National Action Plan on Antimicrobial Resistance 2017-2020 (iNAP) will be launched on Wednesday 25th October next. The Plan will be launched by Minister Simon Harris TD and Minister Michael Creed TD, Minister for Agriculture, Food and the Marine as the development of iNAP has been a cross-Departmental initiative, requiring a cross sectoral and whole of Government approach to addressing the world wide threat of AMR.

This ambitious 3-year Plan covers the use of antimicrobial medicines in animal health and agriculture, as well as human health - taking a 'One Health' approach to tackling AMR, encompassing all sectors. The Plan lists Strategic Interventions and Activities, responsible bodies and priority ranking of timelines for implementation. An implementation plan will be

developed separately which will address means of tackling AMR as appropriate to each sector.

13.

CiB understands that the process and structure outlined in iNAP ought to address the now accepted fact that urban gulls are directly implicated in AMR. At the time of submission of

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this Report we are awaiting confirmation of this understanding from further PQs. Of course, this process is a most significant development and very much welcomed by CiB.

14.

Clearly AMR is a major public health threat of unprecedented dimensions in the modern era. In lay terms, CiB understands AMR to be an ‘umbrella term’ that covers a hugely complex and multi-faceted set of elements, that individually, collectively and evolutionally now and into the future pose major public health threats to society.

15.

CiB also understands that acquired AMR of itself does not always make one ill and can go unnoticed until one does become ill or needs a medical intervention that necessitates the use of antibiotics – perhaps years after one has been contaminated. AMR contamination can effectively be a cause of death (CPE e.g.) by negating the therapeutic value of all antibiotics. And this fact means that measures to achieve risk prevention are key requirements in the interests of protecting public health and safety.

16.

iNAP has spelled out clear strategies. The scientific studies that CiB lists following all seem to be saying that AMR mitigation strategies also need to encompass managing human interfaces with wildlife because species that share the environment with humans have been heavily impacted by human-relevant AMR contamination of the environment and urbanization is constantly compelling closer and closer interfaces with wildlife.

17.

The scientific studies are replete with detailed analysis and results implicating urban gulls that forage anthropogenic sources with human-relevant AMR contamination. Indeed the studies concern themselves with several species. In the context of this Report, gulls are the species of major concern because current (twenty year old) DCHaG policy compels communities – under threat of prosecution - to allow high-density gull colonies to live and breed in close proximity in many ‘at risk’ community settings – a situation that is unprecedented in relation to any other wildlife species.

18.

Two strategic level studies below – Arnold et al and Hassell et al – effectively round up the global evidence and distil the issues for wildlife, people and policy makers.

19.

Preventing AMR-contaminated gulls from nesting, breeding and living too close to families, schools, amenity areas etc. - in the view of CiB and all of our public representatives – is an essential, non-harm and urgent risk prevention strategy for communities impacted by gull colonies. This mitigation step is necessary immediately, while the broader, strategic iNAP approach beds in. DCHaG acknowledged in their Fol release in July 2016 that landfill closure is driving gulls into towns, and the Howth study verified AMR in herring gulls and is consistent with virtually all of the other urban gull studies quoted below – the anthropogenic AMR contamination of wildlife is a fact of life here in Ireland as much as everywhere else.

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20.

The Dutch are recognised as having one of the most advanced AMR surveillance programmes in the world.

http://www.rivm.nl/en/Topics/W/WHO_Collaborating_Centre_Antimicrobial_Resistance_Epidemiology_and_Surveillance/Fields_of_expertise/AMR_surveillance_infrastructure

Apparently they have relatively low antibiotic use in humans but very high use in animals. Their Raad Van Stadt (Supreme Court) ruling in August 2016 that re-instated gull control programmes under the Birds directive (after a lower court injunction was won by the Dutch Fauna Federation in 2014) in the Amsterdam Municipalities of Leiden, Haarlem and Alkmaar expressly and explicitly for reasons of public health and safety is perhaps salient (Google Translate required).

<https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=88649>

21.

Following in this section of the Report, CiB sets out, in the context of high-density gull infestations in our community, clear evidence of urban gulls being widely and specifically implicated in AMR because of their close proximity to and exploitation of anthropogenic AMR sources, and clear statements that this is a major public health concern. Our community's grave concerns about gulls and their AMR-laden detritus in constant close proximity to our families in many community settings – i.e. not just in our homes are based on this scientific evidence and on our own widespread community experiences that are well evidenced in sections 2, 3a, 3b, 4 and 10 of this report.

22.

Faecal contamination (human and animal) is one high-risk pathway for the dispersal and transmission of AMR, though this is also possible from contact transfer, injury infection, water, soil, and airborne transmission via dust from contaminated organic detritus (Arnold et al, and many other studies below).

23.

The following three scientific studies specifically deal with CPE - clearly stated to be the AMR issue "of most concern" in iNAP.

24.

This study from Barcelona in Spain deals with ESBL and CPE facets of AMR specifically in urban gulls: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5278720/>

Prevalence of Extended-Spectrum-β-Lactamase- and/or Carbapenemase-Producing Escherichia coli Isolated from Yellow-Legged Gulls from Barcelona, Spain
The study was conducted from the beginning of May to late July 2014 in the city of Barcelona, including the breeding period of the yellow-legged gull in the city. **The sampling program was part of the sanitary and epidemiological surveillance that is carried out by the Public Health Agency, Barcelona, the institution responsible for the supervision and surveillance of the species. The sampling sites were chosen according to citizens' reports regarding the species nesting on their**

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terraces or high roofs of the city. Every gull chick from each nest found (Fig. 1) was sampled, which amounts to 132 samples in total. All samples were obtained from young specimens born in that same year, and all nests were independent from each other, since the urban structure of cities promotes isolated instead of colonial nesting. Fecal material was obtained by sampling the cloacae of gull chicks with sterile swabs. Each swab was individually preserved in Cary-Blair medium at 2 to 8°C and analyzed within 24 h in the laboratory of the Public Health Agency, Barcelona. Our data showed a higher percentage of resistant *E. coli* in gull fecal samples than in previous studies (14,–16), **but it also represents the first study, to our knowledge, reporting the coexistence of two carbapenemase genes in *E. coli* recovered from yellow-legged gulls. However, some OXA-48-producing *E. coli* strains could have been lost due to the methodology that was specifically designed to search for ESBL. The fact that carbapenem-resistant isolates recovered from the fecal samples of gulls share the same sequence types and resistance modules as those recovered from human samples in different parts of the world highlights the potential role of migratory birds in the dissemination and spread of antibiotic resistance genes.**

This statement is most noteworthy in CIB's view: "The sampling program was part of the sanitary and epidemiological surveillance that is carried out by the Public Health Agency, Barcelona, the institution responsible for the supervision and surveillance of the species".

25.

This study from the south of France deals with CPE specifically in urban gulls:

VIM-1 carbapenemase-producing Escherichia coli in gulls from southern France
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5305998/>

All carbapenem-resistant isolates were positive for bla_{VIM-1} gene. VIM-1-producing E. coli were closely related to carbapenem-susceptible strains isolated from the two gull species but also to human strains. Our results are alarming enough to make it urgently necessary to determine the contamination source of the bacteria we identified. More generally, our work highlights the need to develop more bridges between studies focusing on wildlife and humans in order to improve our knowledge of resistant bacteria transmission routes.....Carbapenems represent the latest therapeutic innovation for β-lactams, but this innovation is old, the latest group of molecules having been approved for clinical use more than a decade ago. Yet they are currently our last effective defense against multiresistant Gram-negative bacteria (Woodford et al., 2014).....To meet this challenge, we need to investigate the role of any nonhuman reservoirs of carbapenem-resistant bacteria, which could favor their further spread in human populations (Woolhouse, Ward, van Bunnik, & Farrar, 2015). To date, carbapenem-resistant bacteria have been isolated from water in some rivers and

sewage plants as well as in a few pets and food animals (reviewed in Woodford et al., 2014). To contribute to the development of this research, we chose to focus on *Escherichia coli* for three reasons: (1) It is a ubiquitous bacteria that can be carried by a wide range of species including humans, other mammals, and birds. (2) It is the most frequent cause of urinary tract and bloodstream infections worldwide. (3) It is a major cause of carbapenem-resistant infection, accounting for 25% of the episodes reported in France during the last decade (INVS 2014). **Hence, our aim was to investigate the presence of carbapenem-resistant *E. coli* in a species that lives in close contact with humans following its recent colonization of urban habitats and that has subsequently experienced a strong demographic increase: the yellow-legged gull (YLG, *Larus michahellis*; Duhem, Roche, Vidal, & Tatoni, 2008). The focal YLG population was previously reported to carry high loads of extended-spectrum β -lactamase (ESBL)-producing *E. coli* (Bonnadahl et al., 2009). We also investigated the *E. coli* strains found in slender-billed gulls (SBG, *Chroicocephalus genei*) living in the same area. We chose to study both species since they share the same environment but their feeding habits differ. YLG are opportunistic, feeding on fresh fish, but, like the black kite, they also feed on refuse and carcasses, whereas SBG mainly feed on marine fishes (Flitti, Kabouche, Kayser, & Olioso, 2009). We investigated *E. coli* carried by chicks since, within the colonies we studied, they had no contact with humans and they could only be contaminated by bacteria brought by adults or already present in the colony. Thus, finding AMRB in those chicks would mean either that these bacteria have been transmitted from adults to chicks or that the environment (surrounding water or soil) is contaminated by them.....**Alarmingly, while the previous report of carbapenem-resistant bacteria in a wild bird was a single case in a raptor (Fischer, Schmoger, Jahn, Helmuth, & Guerra, 2013), we detected VIM-1-bearing *E. coli* carriage in 18 different chicks, which raises the question of the extent of wildlife contamination in the study region. Interestingly, we identified 5 clonal complexes and one unique genotype within the VIM-1-containing bacteria we detected (Figure 2). This suggests that several distinct introductions of carbapenem-resistant *E. coli* occurred on the islet. Further studies are needed to investigate the extent of the circulation of VIM-1-containing bacteria within gull populations in Southern France. **Our findings are all the more worrisome if we consider that gulls live in close contact with human populations since they feed on waste matter, notably in cities, and thus represent a bridge species for pathogens between wildlife and humans.** Moreover, young yellow-legged gulls can fly large distances from their native colony to their wintering sites that include the whole of the Rhone Valley and the French Atlantic coast (Sadoul & Pin, 2009). Thus, this species could favor the spread of carbapenem-resistant bacteria, at least within France.****

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26.

This next study deals with the potential impact of antimicrobial resistance in wildlife, environment and human health – see the references to urban foraging gulls:

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3913889/>

In the other hand, wild birds such as seagulls are often opportunistic marine feeders along the shoreline or offshore, but also eat the food sources provided by humans, especially garbage. Migrating birds that travel long distance seem to act as transporters, or as reservoirs, of resistant bacteria and may consequently have a significant epidemiological role in the dissemination of resistance, as well as being mirrors of the spectrum of pathogenic microorganisms present in humans (Radhouani et al., 2010c; Silva et al., 2011a). Reports on marine fish showed the presence of ESBL-E. coli (Sousa et al., 2011) and VRE (Barros et al., 2012) in gilthead seabream, indicating a dissemination of ESBL-E. coli and VRE into the Atlantic ocean. Moreover, it has previously been demonstrated that seagulls shared strains with isolates cultured from wastewater treatment plants and landfills (Nelson et al., 2008). This highlights the possibility of bacterial exchange between human sewage and birds.

The strength of trillions upon trillions of microorganisms, combined with the ancient force of evolution by constant, insistent variation, will inevitably overpower the drugs. Their spectrum is selected to involve pathogenic bacteria and antimicrobials constantly select naturally resistant bacteria (American Academy of Microbiology, 2009). As bacteria quickly evolve to acquire resistance to the available antimicrobials, it is a constant race for scientists to develop effective strategies to combat infection and to reveal new therapeutic targets (Davies and Davies, 2010). Moreover, antimicrobial resistance evolving and spreading among bacterial pathogens is a public health problem of increasing magnitude. Since the beginning of the antimicrobial era, the selective pressure caused by the use of antimicrobials in clinical, veterinary, husbandry, and agricultural practices is considered the major factor responsible for the occurrence and spread of antimicrobial-resistant bacteria. The evolution of antimicrobial resistance in bacteria is related to the evolution of antimicrobial production. Though, resistance has also been discovered in the absence of antimicrobial exposure, as in bacteria from wildlife, raising an interest about the mechanisms of emergence and persistence of resistant strains under similar conditions, and the implications for resistance control strategies (Pallecchi et al., 2008). Monitoring antimicrobial resistance in wildlife from remote areas could also be a useful tool to evaluate the impact of anthropic pressure (Thaller et al., 2010).

27.

The studies above explicitly link urban gulls with CPE, the AMR contamination variant cited in INAP to be the one “of most concern”. The language in the discussion sections of these used in these studies is very clear in describing the situation as **worrisome, alarming and escalating**.

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28.

The UCD-based scientific study of AMR in Wildlife (gulls in Howth, Dublin, and deer in Wicklow) lead by Dr. Barry McMahon -- makes a very clear statement in the discussion ["This study clearly emphasises that AMR is no longer an issue confined to food-producing animals and humans in Ireland, but is instead a wider environmental issue of public health concern...."](#) The title of the report published from the study is "AMR in Wildlife – a public health concern". DCHaG issued the Wildlife licence for that study and have had a copy of the results report since early 2015. The Study Report summary follows here:

Impacts

- *Antimicrobial resistant (AMR) bacteria in natural environments are a major concern with serious implications for human and animal health*
- *Bacteria with antimicrobial resistant genes were found in a number of wildlife species found in different habitats indicating possible widespread prevalence*
- *The presence of AMR in wildlife and the environment has implications for public health and merits further investigation*

Summary

The emergence and spread of antimicrobial resistant (AMR) bacteria in natural environments is a major concern with serious implications for human and animal health. The aim of this study was to determine the prevalence of AMR Escherichia coli (E. coli) in wild birds and mammalian species. Thirty faecal samples were collected from each of the following wildlife species: herring gulls (Larus argentatus), black-headed gulls (Larus ridibundus), lesser black-back gulls (Larus fuscus), hybrid deer species (Cervus elaphus x Cervus nippon) and twenty-six from starlings (Sturnus vulgaris). A total of 115 E. coli isolates were isolated from 81 of 146 samples. Confirmed E. coli isolates were tested for their susceptibility to seven antimicrobial agents by disk diffusion. In total 5.4% (8/146) of samples exhibited multi-drug resistant phenotypes. The phylogenetic group and AMR-encoding genes of all multi-drug resistance isolates were determined by PCR. Tetracycline, ampicillin and streptomycin resistant isolates were the most common resistant phenotypes. The following genes were identified in E. coli: blaTEM, strA, tet(A) and tet(B). Plasmids were identified in all samples that exhibited multi-drug resistant phenotypes. This study indicates that wild birds and mammals may function as important host reservoirs and potential vectors for the spread of resistant bacteria and genetic determinants of AMR.

Wild animals do not naturally come into contact with antimicrobials, however they may be infected with antibiotic resistant bacteria via the acquisition of resistant bacteria from human sources, agricultural facilities and associated contaminated environments (Dolejska et al., 2007). Once wild animals acquire resistant bacteria, they can serve as reservoirs, vectors and bioindicators of resistant bacterial pathogens and genetic determinants of AMR in the environment (Dolejska et al., 2007; Literak et al., 2007). Prevalence level of resistant bacteria is linked with human activity. This is evident from data by Bonnedahl et al., (2009) and Alroy & Ellis (2011), as antimicrobial resistant profiles of E. coli from herring gulls (Larus argentatus) and yellow-legged gulls (Larus michahellis)

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mirrored those from human wastewater in the United States and those of clinical human isolates in France (Bonnedahl et al., 2009). In most of these studies, the bird populations have relatively frequent interactions with habitat influenced by human activities, the potential for the acquisition and transfer of antimicrobial resistant genes between different wildlife species and environments cannot be underestimated. Wastewater treatment plants and activated sludge have been associated with the development of AMR (Merlin et al., 2011). In Ireland most wastewater is discharged out to sea after treatment and therefore gulls breeding and feeding along the coast are likely to contact this wastewater (Smith et al., 2014). Additionally, in Ireland the agricultural application of animal manure (common practice), with its high concentration of microbial biomass, is a significant route for the introduction of resistant bacteria into the terrestrial environment and therefore both birds and mammalian species such as deer may acquire resistant bacteria as a result of their feeding habits on pastureland. When AMR bacteria colonise wild animals, they in turn become a new environmental reservoir of antibiotic resistance and, especially in migratory birds, they serve as vectors that disperse these bacteria to new localities (Bonnedahl et al., 2009). This may pose a hazard to human and animal health by transmission of resistant strains to waterways, raw food products in fields and human associated environments via faecal contamination (Waldenstrom et al., 2002; Cole et al., 2005).....

Discussion-

This study clearly emphasises that AMR is no longer an issue confined to food-producing animals and humans in Ireland, but is instead a wider environmental issue of public health concern....

*Plasmid-mediated transmission is the most common mechanism of horizontal gene transfer (HGT) and is an almost universal procedure for gene spread among bacteria (Davies and Davies, 2010). In this study, large (>30-kb) plasmids were identified in all samples that exhibited multi-drug resistant phenotypes. Interestingly, uniformly similar plasmid profiles ranging in size from approximately 40- to 80-kb were identified in two divergently related species, hybrid deer and lesser black-back gulls..... The rapid movement of antimicrobial resistance genes between taxonomically divergent commensal and pathogenic bacterial strains may pose a threat to food producing animals sharing similar environments with wildlife. **This is concerning, considering that the resistance phenotypes observed most frequently in *E. coli* recovered from retail meats and in food-producing animals in Ireland have exhibited resistance to ampicillin, streptomycin and tetracycline (Karczmarczyk et al., 2011), the most prevalent resistance phenotypes found in this study..... This ability to share resistance determinants creates a dangerous scenario where commensal *E. coli* strains may harbour antimicrobial resistance determinants, act as reservoirs of resistance, and at a later stage pass these resistance traits onto pathogenic bacteria (Bonnedahl et al., 2009)..... Therefore the potential of plasmid transfer between strains of the same species or between different bacterial species or genera creates an environmental reservoir of resistance with potentially far reaching impacts for human health (Tenover, 2006). The environmental route by which AMR is transmitted between human beings and animals is often the least explored. Allen et al., (2010) and Dolejska et al., (2007), argue that gulls nesting near waste or agriculture water harbor more AMR bacteria than gulls associated with unpolluted water and that proximity to human activity increases the prevalence of AMR found in wild birds. This coincides with the results of this study, In conclusion, this study supported our earlier reported findings that wildlife can serve as reservoirs, vectors and sentinels of AMR in the environment (e.g. Smith et al., 2014; Stedt et al.,***

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2014). Such findings are important, considering that in the last two decades, 75% of emerging human diseases originated in wildlife (Taylor et al., 2001) and that antibiotic treatment is our primary, and in many cases our only method of treatment for infectious diseases (Allen et al., 2010). This study indicates that more detailed studies of environmental reservoirs of AMR are crucial in our fight against infectious diseases, and implementation of appropriate strategies using collective actions to avert the increased morbidity and mortality from AMR.

29.

A further Wildlife study in Galway found worrying levels of AMR in Brent Geese and stated direct concerns about faecal AMR risk on human amenity areas:

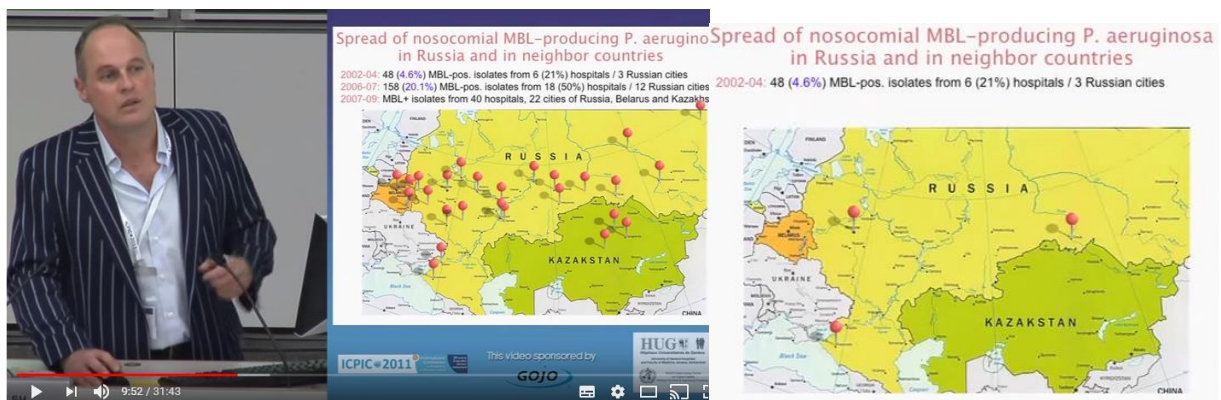
<https://irishvetjournal.biomedcentral.com/articles/10.1186/s13620-016-0072-7>

See the following comments in the above article:

“Perhaps, the greatest zoonotic potential the birds sampled in this research present may be through their use of amenity grasslands. Faecal shedding of resistant bacteria and the persistence of such organisms in the environment may pose a health threat to humans [25]. A study by Benson [26] identified 60 inland sites used by light-bellied **Brent geese** as winter feeding grounds in Dublin, these include playing pitches, public parks, golf clubs and municipal green spaces in densely populated areas. The large amount of faeces resulting from congregating flocks on amenity grassland could present a possible health risk.”

30

Further on geese, this talk by Professor Tim Walsh, Cardiff University deals with the Global spread of Carbapenemases. At the juncture (9:50) shown in the still, Walsh is saying that they are not sure how it is spreading but they think the cases pinned on the map of Russia are likely attributable to wildlife – **specifically geese**, because of the “geographics.” <https://www.youtube.com/watch?v=ik1t2CB2qKk>



The Global Spread of Carbapenemases

The map on the right shows just three AMR positive test results in 2004, the map on the left shows the position in 2009. The AMR ‘positive’ results in Russia increased from 4% in 2002-04 to 20% in 2009 ergo a 500% increase in five years. The Galway McMahon results of tests on Brent geese are clearly highly relevant.

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31.

The following scientific paper deals with a pan European analysis of the AMR issue in relation to migratory birds

<https://actavetscand.biomedcentral.com/articles/10.1186/s13028-015-0166-3>

Conclusions

*CTX-M type ESBLs are common in the faecal microbiota from gulls across Europe. The gull ESBL genotype distribution was in large similar to published datasets from human and food-production animals in Europe. **The data suggests that the environmental dissemination of ESBL is high from anthropogenic sources, and widespread occurrence of resistant bacteria in common migratory bird species utilizing urban and agricultural areas suggests that antibiotic resistance genes may also be spread through birds.***

32.

The following Royal Society scientific paper (August 2016) by Dr. Kathryn Arnold, York University, **is very succinct about the implications of AMR in Wildlife for policy makers:**

<http://rsbl.royalsocietypublishing.org/content/12/8/20160137>

*The biggest issue for wildlife populations is the management response should they be thought to be significant sources of AMR for humans or livestock (see also table 2). The control of wildlife infections transmissible to humans and livestock relies on three main approaches—**separation of, or at least reducing contact with, the wildlife source**, vaccination and wildlife population control, often by culling. Vaccination is not possible for AMR control, and the physical separation of wildlife from livestock is difficult, expensive and, except very locally (e.g. keeping rodents or birds out of feed stores), impracticable. Protecting the human food chain from AMR is important but challenging given that wild game, seafood and bush-meat are important both nutritionally and culturally in many human societies [4]. Furthermore, control and mitigation measures such as improved hygiene and restriction on movements cannot be easily implemented, if at all, for free-living animals. For logistical, economic, historical and cultural reasons, culling is often the approach taken: however, the efficacy and efficiency of culling wildlife in controlling disease are at best controversial.*

Ecological models of AMR transmission involving wildlife need to incorporate indirect rather than just direct host-to-host transmission. Although AMR can be transmitted directly between hosts, for example through predation (food-borne in a clinical context) or grooming and faeco-oral transmission, there is a huge overlap between the microbiota of the normal gut and that of the external environment (e.g. in soil and water) with horizontal transmission of AMR possible in both. Such models could be based on spatial movements in relation to a common environmental source of AMR contamination such as a refuse dump [28]. Sewage treatment plants, for example, are hotspots of AMR, which can provide valuable pockets of semi-natural habitat for birds and bats, attracted by the invertebrates that themselves feed in the sewage [38]. In fragmented landscapes, birds and bats often then move between isolated discrete patches of suitable habitat or food sources [39], such as gardens and farms, enabling the further dispersal of AMR.

A particular concern about AMR dispersal is wildlife species that have the capacity for long-range movements.

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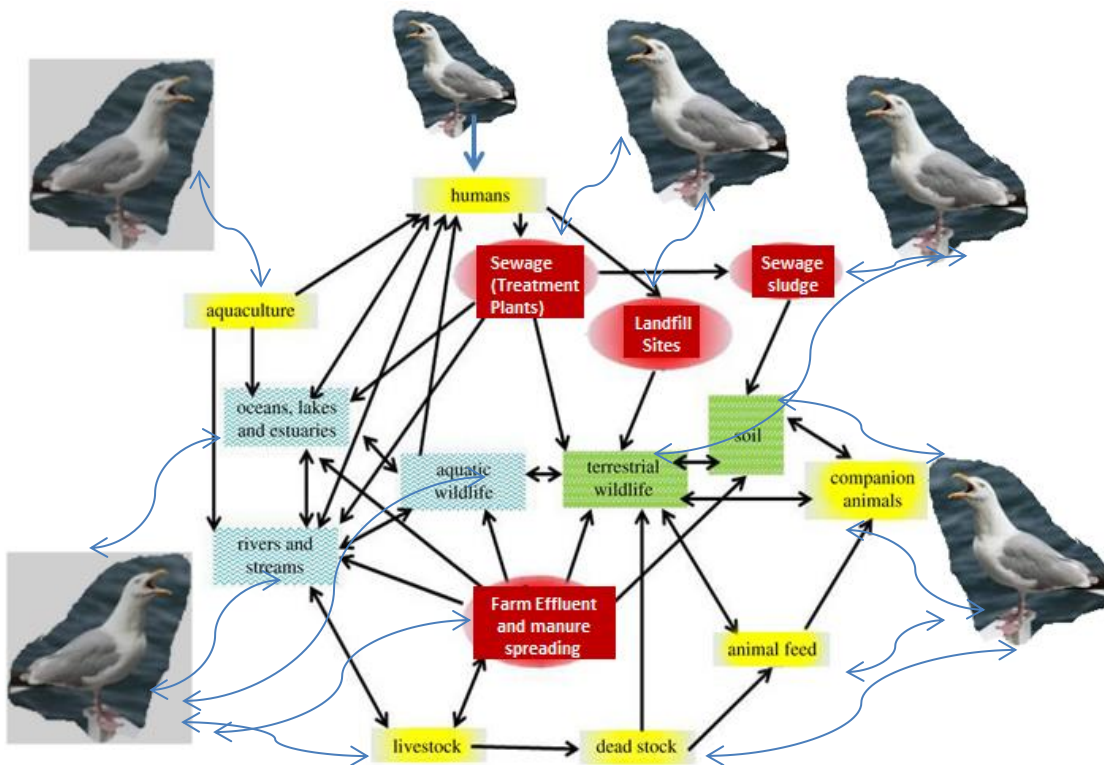
33.

Migratory birds arriving from beyond national boundaries could transfer new or emerging patterns of AMR, but even resident species have the potential to move AMR from hotspots to vulnerable populations. The potential of wild animals to disseminate AMR depends on their AMR 'infection' status, their direct and indirect contact with other populations and their movements within the landscape. ***In communal corvid roosts in Europe and the USA, 2.5–6.0% of faecal samples contained resistance genes for vancomycin, an antimicrobial 'of last resort' in human medicine [23,35]. Gulls carrying medically significant AMR are capable of long-range movements and are increasingly found feeding on anthropogenic waste and nesting in urban areas [24,27,36].***

34.

Ms Arnold's statement above viz. "The control of wildlife infections transmissible to humans and livestock relies on three main approaches—separation of, or at least reducing contact with, the wildlife source, vaccination and wildlife population control," is most salient. In the context of CiB's concerns about gulls, the red underlined phrase equates to systematic nest and egg removal – the prevalent non-harm measure across the UK and Northern Europe. Vaccination is impossible for AMR and that leaves the harm measure – population control, and CiB has never called for any harm measures.

CiB have borrowed this chart of potential AMR pathways from the Arnold study above and we have added the gull pictures to signify the species known behaviours.



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35.

There are only three species that CiB can think of that have both an active presence and direct contact with each other, and with every activity box on the above chart viz. humans, bacteria and gulls. **This is a risk statement** by CiB. All of the literature seems to be inferring or stating directly that urban gulls (and geese) are on an inevitable path to vector-to-humans status because of the resistance and genetic capabilities of bacteria and because of the nature of human-wildlife interfaces.

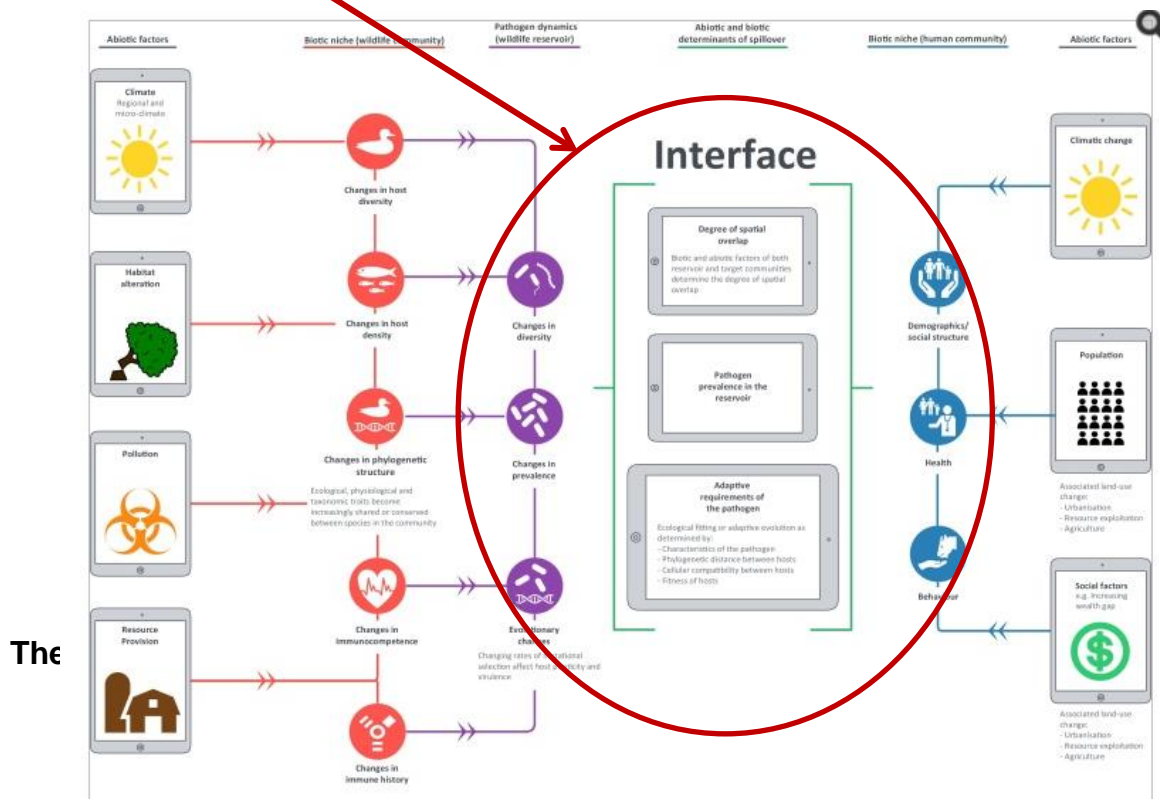
A Serbian study (January 2017) of the AMR risk from large flocks of gulls seeking to forage at free-range poultry and pig farms and defecating profusely at those sites clearly states the need to keep separation between gulls and food-chain animals due to AMR risk <http://niv.ns.ac.rs/full/roleld16.pdf>.

36.

Like the Arnold study above, this next study (Hassell et al) is set at a strategic level, and again is most interesting and salient. **Urbanization and Disease Emergence: Dynamics at the Wildlife–Livestock–Human Interface:** <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5214842/>

37.

You will need to look up the link to be able to read all of the slide properly. However the points of interest from CiB perspective are the “Interfaces”. CiB believes that our community’s **interfaces** with urban gull colonies are a source of several unacceptable, far higher than ambient average risks and we make our claims on this point after the text extract from this article.



Here are some extracts from the text of the article:

Urbanization is characterized by rapid intensification of agriculture, socioeconomic change, and ecological fragmentation, which can have profound impacts on the epidemiology of infectious disease. Here, we review current scientific evidence for the drivers and epidemiology of emerging wildlife-borne zoonoses in urban landscapes, where anthropogenic pressures can create diverse wildlife–livestock–human interfaces. **We argue that these interfaces represent a critical point for cross-species transmission and emergence of pathogens into new host populations, and thus understanding their form and function is necessary to identify suitable interventions to mitigate the risk of disease emergence. To achieve this, interfaces must be studied as complex, multihost communities whose structure and form are dictated by both ecological and anthropological factors.**

Emerging infectious diseases (EIDs) (see Glossary) are recognized as pathogens ‘whose incidence in host populations has increased within the past two decades or threatens to increase in the near future’ [1]. As well as describing the spread of newly evolved or previously undetected pathogens, pathogens that are increasing their geographic spread, increasing their impact, changing their clinical presentation or moving into human hosts for the first time, the term emergence can also be used to describe the reappearance (or re-emergence) of a known infection after a decline in incidence [1]. It is estimated that between 60 and 80% of newly emerging infections are zoonotic in origin and thus are (at least initially) dependent on an animal reservoir for survival 2, 3. Of these emerging zoonoses, at least 70% have a wildlife origin, with cross-species spread and onward transmission representing a natural response to the evolutionary pressures of pathogen ecology 3, 4. **Although both wildlife and domesticated animal reservoirs can be considered important sources of EIDs, it is the anthropogenic influence on ecological systems that dictates the level of risk that operates at the interface between humans and animals in zoonotic disease emergence.** Urban-adapted (referred to here as synanthropic) wildlife is abundant in cities, and is composed of species that can respond to behavioral and resource-based selection pressures imposed by urban environments [18]. Many synanthropic species have been shown to carry zoonotic pathogens and in some cases act as reservoir hosts for these pathogens. Studies generally focus on those species that are found ubiquitously within human environments and that commonly act as hosts for zoonotic diseases, such as rodents, birds, bats, and certain other species of mammal (e.g., foxes in Europe and raccoons in the US) 19, 20. Rodents, for example, harbor important zoonoses such as plague,

39.

leptospirosis, and hantavirus infection, and the emergence and re-emergence of these pathogens in human populations is seemingly linked to increasing urbanization and urban poverty in developing countries and the ecology of zoonotic pathogens in rat populations 17, 21, 22, 23. Anthropogenic changes associated with urbanization can also bring bats into closer contact with livestock and humans and alter disease ecology 24, 25. As such, human activities that increase exposure to populations of urban-dwelling wildlife species will undoubtedly increase the risk of pathogens spilling over to humans or livestock, but little is known of the epidemiological processes ... by which this occurs at such interfaces. ... ***Given their epidemiological significance, interfaces represent a critical point of control for the transmission of zoonoses. A detailed discussion of control measures is beyond the scope of this article, but interventions could be implemented at an interface (i.e., preventative action such as husbandry and behavioral changes) or policy level (for a complete review, see [93]***

40 The AMR-in-gulls situation seems to be 'pandemic'. The following link is to an Argentinian study: <http://aac.asm.org/content/early/2016/08/23/AAC.01120-16.full.pdf>

Abstract

Extended-spectrum cephalosporin-resistant Enterobacteriaceae are a public health concern due to limited treatment options. Here, we report on the occurrence and the molecular characteristics of extended-spectrum cephalosporin-resistant Enterobacteriaceae recovered from wild birds (Kelp gulls). Our results revealed Kelp gulls as a reservoir of various extended-spectrum cephalosporinase genes associated with different genetic platforms. **In addition, we report for the first time the presence of a known epidemic clone of Salmonella enterica serotype Heidelberg (JF6X01.0326/XbaI.1966) among wild birds**.....the occurrence of extended-spectrum cephalosporin-resistant (ESCR) Enterobacteriaceae has been detected in wild birds lately, especially in gull populations (Laridae) (2-7). The Kelp gull (*Larus dominicanus*) is a large gull species distributed in coastal areas through much of the southern hemisphere and is the only gull species inhabiting the Antarctic continent. It is known to be a food generalist, regularly feeding on food resulting from human activities (abattoirs, garbage, sewage outfalls, etc) (8). This behaviour makes it an interesting sentinel species when studying environmental spread of antibiotic resistant bacteria. Our aim was to determine the occurrence and the molecular characteristics of ESC

R Enterobacteriaceae isolates recovered from Kelp gulls, as this species could favour the dissemination of ESC R Enterobacteriaceae in human populations and the pristine Antarctic environment.Although the resistance gene families described in this study are similar to those reported previously (14-23), we documented for the first time the presence of blaSHV-2A and the predominance of blaCTX-M-2 among wild birds. The latter mirrors the situation observed for nosocomial infections in Argentinian hospitals (24, 25), confirming the endemicity of blaCTX-M-2 within this area and its potential transmission from humans to wild birds and/or vice versa. Of note was the association of blaCTX-M-2 gene with ISCR1 on four different plasmid replicon types associated with six different E. coli STs and on the chromosome of five other different E. coli STs, underscoring that ISCR1 has probably played a significant role in the capture of this gene by conjugative plasmids, and in its further inter-replicon and inter-clone dissemination. Moreover, our data suggest the horizontal transfer of a

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conjugative *IncI1/ST80* plasmid (105 Kb) encoding *bla*CTX-M-14 among five different *E. coli* STs, underscoring the dissemination of this gene owing to a successful plasmid-gene combination.

Interestingly, some of the identified STs (ST10, ST117, ST157, ST359, ST617 and ST744) have been previously reported among wild birds as well, but they have been found to harbour different extended-spectrum cephalosporinase genes, suggesting that avian commensal *E. coli* strains play a role in the maintenance and dissemination of these genes (1, 15, 16, 19). In contrast with the solely ESCR on November 27, 2017 by guest <http://aac.asm.org/> Downloaded from *S. Heidelberg* isolate encoding *bla*CMY-2 on a 97Kb *IncN* plasmid reported previously from an Argentinian adult inpatient (26), here we documented for the first time the presence in wild birds of a known epidemic ESCR *S. Heidelberg* clone (JF6X01.0326/XbaI.1966), encoding *bla*CMY-2 on a 110Kb *IncI1/ST12* plasmid. This PFGE-type circulating in USA and recently being introduced to Europe (9), has been documented to cause outbreaks and exhibit potency for bloodstream infections (27).

In conclusion, although there are few studies on the presence of resistance genes conferring ESCR phenotype amongst Enterobacteriaceae from wild birds, to our knowledge this is the first report on the detailed characterisation of ESCR Enterobacteriaceae, including the underlying antibiotic resistance gene content and its genetic support (plasmids and IS elements). **Our data implies that Kelp gulls act as reservoirs of a variety of extended-spectrum cephalosporinase genes associated with different genetic platforms that could facilitate their horizontal transfer. In addition, our findings underscore the potential role of Kelp gulls as abridge species for ESCR Enterobacteriaceae between humans and wildlife and as a spreader of these isolates among human populations and naturally antibiotic-resistant bacteria free environments (Antarctic continent) via their movement and migration.**

41.

This study is from Alaska: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5030259/>

Results

Screening of *E. coli* from fecal samples collected from glaucous-winged gulls (*Larus glaucescens*) at Middleton Island revealed 8% of isolates were resistant to one or more antibiotics and 2% of the isolates were resistant to three or more antibiotics. In contrast, 55% of *E. coli* isolates derived from fecal samples collected from large-bodied gulls (i.e. glaucous, herring [*Larus argentatus*], and potentially hybrid gulls) on the Kenai Peninsula were resistant to one or more antibiotics and 22% were resistant to three or more antibiotics. In addition, total of 16% of the gull samples from locations on the Kenai Peninsula harbored extended-spectrum cephalosporin-resistant *E. coli* isolates (extended-spectrum beta-lactamases [ESBL] and plasmid-encoded AmpC [pAmpC]), in contrast to Middleton Island where no ESBL- or pAmpC-producing isolates were detected.

Conclusion

Our findings indicate that increased prevalence of antibiotic resistance is associated with urban environments in Southcentral Alaska and presumably influenced by anthropogenic impacts. Further investigation is warranted to assess how migratory birds may maintain and spread antimicrobial-resistant bacteria of relevance to human and animal health.

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The prevalence of antimicrobial-resistant *E. coli* detected in gulls at Kenai Peninsula sites (55%) was similar to that found in yellow-legged gulls in France (47%) (11) and the most recent assessment of gulls at Barrow, Alaska (48%) (15), areas in close proximity to human settlements providing anthropogenic inputs into the environment. Additionally, the finding that all ESBL/pAmpC-harboring *E. coli* isolated in this study were detected among gull samples collected at Kenai Peninsula, including globally disseminated blaCTX-M-15, is similar to the recent detection of blaCTX-M in Barrow, Alaska at a sampling site in close proximity to the local landfill (15). As blaCTX-M-15 and blaCMY-2 are relatively common in humans and livestock in the USA (24, 25), it is unsurprising to find these enzymes in gulls inhabiting Alaska landfills.

Finally, given the relatively high prevalence of antibiotic resistance detected in large-bodied gulls on the Kenai Peninsula (i.e. 55% of isolates tested) and the geographic and temporal proximity of our sampling site at the mouth of the Kenai River to a popular personal-use sockeye salmon (*Oncorhynchus nerka*) fishery, additional research may be warranted to understand the risk for human bacterial *E. coli* infections via environmental transmission at this site during summer.

42.

The following youtube discussion from the American Society for Microbiology deals with AMR linked to seagulls in Miami Beach and outbreaks of ESBL in Miami Hospitals. The guest is Patrice Normand. He refers to identical situations – gulls and ESBL - in Portugal, Sweden and the South of France, Turkey. He specifically points to CTXM-15 reservoirs widespread in the environment now – e-coli in plants and water and garbage, and seagulls as spreading ESBL in the environment, indeed the spread problem relates to birds and it is a world-wide problem. **At 14:30 he says this may enhance the problem of multi-drug resistance determined in ‘community-acquired’ patients as distinct from hospital acquired patients.** <https://youtu.be/FRTqumoMAwI>



At 15:35 he acknowledges that “we cannot kill all the birds” or “hopes that we don’t”. While policy makers wrestle with the big implications of the AMR-Wildlife issue, gull nest and egg removal from too close proximity to human living spaces is a reasonable and prudent measure.

43.

This Australian study brings us back to CPE (the AMR contamination “of most concern” as stated in the iNAP, and gulls.

<https://academic.oup.com/jac/article-lookup/doi/10.1093/jac/dkv306>

Abstract

Objectives

The objective of this study was to investigate the silver gull as an indicator of environmental contamination by salmonellae and carbapenemase-producing Enterobacteriaceae (CPE) in south-east Australia.

Methods

A total of 504 cloacal samples were collected from gull chicks at three nesting colonies in New South Wales, Australia [White Bay (n=144), Five Islands (n=200) and Montague Island (n=160)] and were examined for salmonellae and CPE. Isolates were tested for carbapenemase genes and susceptibility to 14 antibiotics. Clonality was determined by PFGE and MLST. Genetic context and conjugative transfer of the carbapenemase gene were determined.

Results

A total of 120 CPE of 10 species, mainly Escherichia coli (n=85), carrying the gene blaIMP-4, blaIMP-38 or blaIMP-26 were obtained from 80 (40%) gulls from Five Islands. Thirty percent of birds from this colony were colonized by salmonellae. Most isolates contained the gene within a class 1 integron showing a blaIMP-4-qacG-aacA4-catB3 array. The blaIMP gene was carried by conjugative plasmids of variable sizes (80–400 kb) and diverse replicons, including HI2-N (n=30), HI2 (11), A/C (17), A/C-Y (2), L/M (5), I1 (1) and non-typeable (6). Despite the overall high genetic variability, common clones and plasmid types were shared by different birds and bacterial isolates, respectively.

Conclusions

Our data demonstrate a large-scale transmission of carbapenemase-producing bacteria into wildlife, likely as a result of the feeding habits of the birds at a local waste depot. The isolates from gulls showed significant similarities with clinical isolates from Australia, suggesting the human origin of the isolates. The sources of CPE for gulls on Five Islands should be explored and proper measures applied to stop the transmission into the environment.

Topic: antibiotics plasmids Australia aves clone cells electrophoresis, gel, pulsed-field enterobacteriaceae environmental pollution genes habits new south wales replicon bacteria genetics salmonella silver escherichia coli microbial colonization integrons transfer technique clonality (genetic analysis)

Issue Section: ORIGINAL RESEARCH

Introduction

Carbapenems are one of the most important antibiotics in human medicine and are regarded as last-line drugs to treat infections caused by MDR Gram-negative bacteria. Clinical efficacy of these antibiotics is threatened by carbapenemases, β -lactamases capable of rapid degradation of carbapenems. Metallo- β -lactamases, mainly VIM, NDM and IMP, are among the most disseminated carbapenemases worldwide.¹ IMP-type β -lactamases are found in various clinically important Gram-negative bacteria, such as *Pseudomonas* spp., *Acinetobacter* spp. and Enterobacteriaceae, all round the world,² endemically in Japan, Taiwan, China, Korea and the Philippines.^{3–6} Currently, IMP-4 is the most commonly reported carbapenemase in clinical isolates of Enterobacteriaceae, associated with outbreaks in healthcare settings in Australia,⁷ but its wide dissemination has been documented also in China.⁴

Transmission of carbapenem-resistant bacteria to food-producing animals and the environment is of great concern. So far, there are scarce reports of carbapenemase-producing Enterobacteriaceae (CPE)

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from farm animals and wildlife.⁸ *Salmonella* is an important zoonotic pathogen causing infections in humans and domestic animals. Wild birds, such as gulls, influenced by various anthropogenic activities, are important in the epidemiology of human and livestock salmonellosis.⁹ In Australia, the prevalence of *Salmonella*, including antibiotic-resistant strains in wild birds, is largely unknown.¹⁰

In this work, we studied the silver gull (*Chroicocephalus novaehollandiae*) as an indicator of environmental contamination by *Salmonella* and CPE in south-east Australia in respect of the current epidemiological situation in this country. The silver gull feeds on fish, marine and terrestrial invertebrates, but also on human refuse collected at landfills.^{11,12} **This study is the first known report of a large-scale transmission of CPE into wildlife.**

44a.

This Swedish study brings us back to Europe after the Americas and Australia.

Antibiotic resistance in wild birds

https://www.researchgate.net/publication/261369437_Antibiotic_resistance_in_wild_birds

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Abstract

Wild birds have been postulated as sentinels, reservoirs, and potential spreaders of antibiotic resistance. Antibiotic-resistant bacteria have been isolated from a multitude of wild bird species. Several studies strongly indicate transmission of resistant bacteria from human rest products to wild birds. There is evidence suggesting that wild birds can spread resistant bacteria through migration and that resistant bacteria can be transmitted from birds to humans and vice versa.

Furthermore, levels of resistance seem to correlate with the degree of association to human activities (30,31). Contaminated habitats where antibiotic-resistant bacteria have been frequently isolated include intensively managed livestock farms, landfills, and waste-water treatment facilities (9,13,32). **Gulls have been found to carry the same strains of *E. coli* as can be isolated from landfills and waste-water treatment plants, which demonstrates the possibility of transmission between sewage and birds (33).**

A recent study in Chile has shown a prevalence of ESBL-producing *E. coli* among Franklin's gulls (*Leucophaeus pipixcan*) that is more than twice as high as in humans in the same area. Humans and gulls share sequence types indicating transmission, but interestingly gulls also share sequence types with human clinical samples from central Canada, a nesting place for those gulls suggesting that migration could be a mechanism of dissemination (29). Similarly, the isolation of antibiotic-resistant *Salmonella* strains from black-headed gulls (*Chroicocephalus ridibundus*) just arriving in southern Sweden from non-breeding areas in West and Southwest Europe suggests spread through migration (38). Antibiotic resistant strains including ESBL-producing *E. coli* have also been isolated from birds from remote and/or preservation areas (39-43). This could be interpreted as possible footprint of human activity, but at least in some cases it seems more plausible with spread through bird migration (39,42). Spread of antibiotic-resistant bacteria to remote areas that are reached mainly by migrating birds could also influence bacterial communities in these fragile ecosystems, as antimicrobial substances are part of the cross-talk of bacteria (30).

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Conclusions

There is ample evidence to suggest that wild birds can carry antibiotic-resistant bacteria and that transmission can occur from human rest products. There are indications of spread of antibiotic resistance through migration of wild birds and of transmission between humans and wild birds and vice versa. As previously suggested, thorough spatial and temporal studies of antimicrobial drug resistance in different natural habitats of wild birds are warranted (39,44). This research can help us to better understand the dissemination of antibiotic resistance in the environment, to understand and potentially be able to decrease spread through bird migration, and to assess the risk of spread of resistance from wild birds to humans.

The results in this Swedish study are clearly stated. **There are indications of spread of antibiotic resistance through migration of wild birds and of transmission between humans and wild birds and vice versa.** There are consistent human clinical samples in Chile and in Central Canada, both ends of the Franklin gulls migration trips.

45

In conclusion on world-wide studies of gulls and AMR, the following Lithuanian study deals with MCR-1 (Colistin resistance) found in Herring Gulls and shows on a map of Europe where gulls 'ringed' in Lithuania were subsequently found in "almost every country in Europe"; See the map at:

<https://academic.oup.com/jac/article/71/8/2333/2238930>

This study also correlates with MCR1 in Kelp gulls in Argentina (study linked above, and Seagulls on two continents.

The reports underline once again the hitchhiking prowess of the MCR-1 resistance gene. Scientists say the gene, if it teams up with certain other resistance genes, could render bacteria resistant to all existing drugs. MCR-1 confers resistance to colistin, a last-resort antibiotic for drug-resistant infections. The gene was first detected in China in November 2015, and since then at least 20 countries have reported it, according to the US Centers for Disease Control and Prevention (CDC). In the United States, MCR-1 was found in Escherichia coli from a Pennsylvania woman in May and also was found recently in stored E coli samples from two pigs. Instead of being anchored to a bacterial chromosome, the MCR-1 gene is carried on a plasmid, a ring of DNA that can pass between different bacterial species. In most cases the gene has been found in E coli, but it also has been detected in Salmonella, Shigella sonnei, and Klebsiella pneumoniae. In one of the JAC reports, Lithuanian researchers said they found the MCR-1 gene in E coli from 1 of 117 fecal and cloacal samples collected in January 2016 from European herring gulls that frequented a garbage dump in the city of Kaunas. They found that the isolate was resistant to ampicillin and ampicillin/sulbactam as well as colistin, but was susceptible to all other antibiotics tested. They billed the discovery as the first known occurrence of the MCR-1 gene in E coli carried by a wild migratory bird, to the best of their knowledge. Gulls that were ringed in Lithuania have later turned up in nearly all European countries, showing the extent of their migrations, the researchers said. They commented that inappropriate management of medical, biological, and food waste may contribute to the spread of infectious agents by wild birds, especially gulls, adding, "Water contaminated by faeces of birds should be foreseen as an important risk factor for transmission of resistant bacteria."

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46.

The following studies deal with Salmonellosis, gulls and human infection risks.

As a preface to this scientific evidence, note the following extract from a PQ reply to Darragh O'Brien TD on 17th October 2017:

The HSE Health Protection Surveillance Centre (HPSC) has previously considered the evidence pertaining to gulls and potential health risks. A number of scientific studies have looked at the specific issue of human disease and gulls (from the early 1980s on; the most recent in 2005). While there is some evidence that wild birds (including gulls) may transmit salmonella to animal feed and drinking water and by this mechanism potentially lead to human infection, the evidence for this in each instance was considered weak. Studies that have looked at the likelihood of direct spread of salmonella from gulls to humans conclude that gulls as carriers of Salmonella constitute little health hazard to human health concluding that there is only a low risk of transmitting Salmonella from either gulls or feed factories they may contaminate to humans or domestic animals.

In the context of (email) discussions between CiB and the HSPC in 2016, CiB raised several health concerns in addition to and not just infectious disease risks, and were speaking about risk 'avoidance' and the 'prevention' philosophy that has been at the heart of public health policy for years now, rather than waiting for evidence of sickness i.e. casualties. CiB believes that there is ample 'evidence' of a need for '**separation**' (Arnold et al) of people from the risks posed by gulls by denying them breeding sites in too close proximity to families, schools, food areas, amenity areas etc..

47.

The EPA cite salmonellosis and campylobacter as public health risks from scavenging birds (especially gulls) and enforce strict regulations in respect of bird controls and waste management licences. The latest study referred to in the HSPC response was in 2005 – twelve years ago. Balleally landfill closes in 2013, sending thousands of gulls into towns (DCHaG, FoI, July 2016). The EPA has closed public beaches several times in recent years, regularly implicating gull faecal contamination among their reasons – a public health policy that is consistent around the world. It seems most unlikely to CiB that the HSE would seek to infer that the EPA policy was/is unnecessary.

48.

The following studies from 2014 (USA) and 2016 (Chile) deal with gulls and salmonellosis, and there are also Swedish studies much more recent than 2005 (HSE) implicating lesser Black-backed gulls in Salmonellosis.

49.

Virginia, USA, **2014** – Salmonella Newport from gulls – contaminated tomato fields:

<https://www.ncbi.nlm.nih.gov/pubmed/24141129>

Evaluating gulls as potential vehicles of Salmonella enterica serotype Newport (JJPX01.0061) contamination of tomatoes grown on the eastern shore of Virginia.

5.

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Salmonella enterica serovar Newport pattern JJPX01.0061 has been identified as causing several multistate outbreaks in the last 10 years, primarily due to contamination of tomatoes grown in Virginia. The goal of this study was to evaluate gulls as a potential vehicle of *S. Newport* pattern 61 contamination for tomatoes grown on the Eastern Shore of Virginia. Gull fecal samples were collected at four sites in eastern Virginia for 3 months (May to July) in 2012, resulting in 360 samples, among which *Salmonella* was isolated from 62 samples. Twenty-two serotypes and 26 pulsed-field gel electrophoresis DNA fingerprint patterns, including *S. Newport* pattern 61, were identified. All of the patterns that were isolated multiple times, with the exception of *S. Newport* patterns JJPX01.0030 and JJPX01.0061, were clustered in time and geographical location. These results strongly suggest that both patterns of *S. Newport* are endemic to sites on the Eastern Shore where gulls were sampled. This study provides additional information regarding the epidemiology of *S. Newport* pattern 61 in Virginia and how tomatoes sold interstate may become contaminated in the field. **Twenty-two Salmonella serotypes were isolated during this study. No study performed in the United States with similar sampling goals has demonstrated this degree of serotype diversity.** The only other study that shows a comparable diversity in serotypes among gulls was a study performed in Scotland that also included sampling at a sewage site (21). This suggests that serotype diversity might also be influenced by sampling locations and environmental conditions, **as evidenced by the number of serotypes isolated at site 4 compared to the number of serotypes identified at the three landfill sites. The top three serotypes (Infantis, Typhimurium, and Newport) isolated during this study were not surprising considering that they are listed among the top 10 laboratory-confirmed Salmonella serotypes by the Food-Borne Diseases Active Surveillance Network for 2011 (22).**

While location had an effect on the number of *Salmonella* isolates, and possibly their diversity, the interaction of location and month influenced the PFGE results. PFGE patterns that were identified multiple times, with the exception of the *S. Newport* patterns, were clustered in time and space, corroborating previous studies showing that gulls are colonized by *Salmonella* in the environment for short periods. **The presence of the *S. Newport* PFGE patterns, especially *S. Newport* pattern 61, in multiple months strongly suggests that the two *S. Newport* patterns are ubiquitous in the environments at the landfills on the Eastern Shore and that gulls have the ability to transport and contaminate nearby properties, such as tomato fields, with *S. Newport*.** This conclusion is supported by the fact that no isolates of *S. Newport* were found at either of the control sites. If *S. Newport* pattern 61 is indeed endemic on the Eastern Shore, it would be very difficult to decontaminate and eliminate the organism, but at least steps could be taken to decrease contamination by the gulls.

50.

This study is from Chile in 2016, and makes very strong statements about salmonellosis and gulls...

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5068155/>

Whole-Genome Sequencing Analysis of *Salmonella enterica* Serovar Enteritidis Isolates in Chile Provides Insights into Possible Transmission between Gulls, Poultry, and Humans

IMPORTANCE This study highlights the importance of gulls in the spread of *Salmonella Enteritidis* in Chile. We revealed a close genetic relationship between some human and gull *S. Enteritidis* strains (with as few as 2 of 4,065 genes being different), and we also found that gull strains were present in clusters formed by strains isolated from other sources or distant locations. Together with previously published evidence, this suggests that gulls might be spreading this pathogen between different regions in Chile and that some of those strains have been transmitted to humans. Moreover, we discovered that Chilean *S. Enteritidis* strains clustered

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separately from most of *S. Enteritidis* strains isolated throughout the world (in the GenBank database) and thus it might be possible to distinguish the geographical origins of strains based on specific genomic features. This could be useful for trace-back investigations of foodborne illnesses throughout the world.

Our analyses also identified a close relationship between *S. Enteritidis* strains isolated from humans and gulls, indicating that birds might represent an epidemiologically relevant reservoir of zoonotic *S. Enteritidis* in Chile (Fig. 1A). Similarly, Bell et al. recently reported close relationships among *S. Newport* strains isolated from geese, freshwater, and clinical patients in the United States (24), underlining the importance of wild birds in zoonotic salmonellosis throughout the world.

51.

It seems abundantly clear from the laicised warnings in iNAP, the British CMOs statement in her end of year Report, and virtually all of the commentary in the studies - that acquired AMR in a person will not necessarily be noticed when the transfer occurs and may not be discovered for years until the person needs antibiotics. It also seems very clear from the scientists that bacterial evolution and history makes it inevitable that microbes will continue to evolve resistance and bridge all interfaces – it is just a matter of time.

52.

Also given the tiny scale of testing against global scale and dispersal, and suitable reservoirs, it seems mathematically very likely that AMR to humans transfer could be occurring already in many as yet undetected circumstances. It is hardly a coincidence that gulls are being tested all over the world.

53.

The One-Health approach is clearly correct, and risk avoidance and mitigation strategies are an essential approach. And, as stated above, Arnold et al 2016, distills the policy considerations for people, animals and wildlife/environment very clearly.

54.

CiB takes a common sensed, logical view of this material. And that brings us back to the “interfaces”. Arnold’s diagram above maps out the environmental pathways for AMR, and we have already pointed out that gulls (and humans) operate on every one of those pathways. The Hassell article states that urban/anthropogenic factors increase all risks. Every single study above (except the Galway Brent geese) is dealing with human-relevant AMR, including CPE – the type “of most concern”, in urban gulls.

55.

Therefore, logically, communities currently being compelled to accept high-density gull populations living and breeding in very close proximity for most of the year, by DCHaG policy, interpretation and application of legislation, and procedures, are all at a considerably higher risk than the general levels of ambient risk that applies in communities not impacted by gull issues. And the higher risk applying in gull infested communities is mitigatable by Derogations that were designed exactly for that purpose.

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56.

From a risk analysis perspective, Looking at case study 2 above, the one with six pairs of adult gulls and eighteen eggs removed from one residential property – is the family in that house at the same risk of AMR acquisition from gulls as a family with no gulls living all around them? If the Balbriggan Derogation had not been implemented, that family would have had the faecal contamination from twelve adult gulls and up to eighteen chicks on their house for up to seven months. Case study 1 above would have had six adult gulls and nine chicks for seven months. And the bigger colonies and businesses, restaurants and supermarkets all carry increased risks due to close proximity. The Arnold paper is very clear:

*The control of wildlife infections transmissible to humans and livestock relies on three main approaches—**separation of, or at least reducing contact with, the wildlife source**, vaccination and wildlife population control,”*

57.

The only practicable non-harm means of separation or reducing human contact with the wildlife source - viz. in context, urban gulls - that is available to families is persistent nest and egg removal that drives the birds away from people, as we have shown and it is generally accepted that spikes and fake hawks etc. are ineffective against determined gull colonies. And this is a ‘public health’ issue that must now be recognised in addition to the ‘public safety’ issues recognised in the 2017.18 pilot Derogation. While both the safety and health criteria are serious, the risk spectrum, potential impacts and the potential operational responses required for the latter (health) are obviously of a different order of magnitude.

58.

The people in Balbriggan who are au fait with these studies are deeply concerned about the evidence and conclusions presented therein. They fear that there is a real very serious threat to public health for communities living with the conditions evidenced in this Report. The community urgently requires assurances that the risks are understood, monitored and appropriate follow up will be taken in order to protect public health.

59.

CiB restate here – our community’s evidence already provided to DCHaG, on a par with the UK and Northern Europe – even without regard to any of the AMR material in this section of this Report, already warrants a public health and safety Derogation, to render Ireland consistent in the handling of this issue with our UK and other EU neighbours.

60.

The additional AMR evidence assembled here is most seriously perturbing. It seems unconscionable that anyone would be compelled against their will to tolerate urban gulls nesting in close proximity to their living, schools, amenity or work spaces when both National and EU legislation specifically caters for public health and safety Derogations.

5.

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61.

It is impossible to envisage any justification upon which DCHaG could either continue to compel people to accept gulls breeding and living in close proximity, and very hard to understand why or on what basis DCHaG is withholding the 'public health' part of the legal EU Derogation criterion that is specifically catered for in the legislation.

62.

Ordinary common sense and human life history and experience tells most people that any faecal contamination carries serious health risks – we have sophisticated hygiene legislation, regulations and enforcement regimes in place to protect against such risks and we have relentless hygiene protection standards in our hospitals and care centres.

63.

The Environmental Protection Agency (EPA) issued stern criticism on 23rd October 2017 (RTE Nine O'clock News) of Ireland's continued underperformance in the area of sewerage and waste-water treatment citing forty-four live daily outlets and the fact that Irish Water expects no change in this situation until 2021 at the earliest.

64.

This is the 'raw sewerage' outlets map published in October 2017 by the EPA:



Still taken from 9pm RTE news, 24th October 2017. The audio commentary over this piece describes a constant daily flow of raw sewerage into the Harbour. The gulls can be seen foraging in the harbour.

Gulls frequent and forage every one of the coastal locations above and also have a colony in Athlone, in the heart of the midlands. The EPA has closed several public beaches in recent years for public health and safety reasons, with gull faecal contamination regularly implicated. And the EPA have enforced international standards and strict Bird Control regulations on human waste management sites for years – in order to protect public health and safety from pathogen dispersal by birds.

65.

Every one of the AMR studies quoted above refers to “anthropological sources” of AMR

5.

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contaminating the environment and therefore wildlife – including urban gulls particularly because the freely exploit human waste of all kinds. Raw human sewerage is probably the most significant contributor of human AMR into the environment (Arnold: *Sewage treatment plants, for example, are hotspots of AMR,*) sewerage treatment does not remove microbials. It is not disputed that gulls forage freely on sewerage, and three of the scientific studies above highlight the human-relevant CPE variant of AMR in urban gulls, whereas ‘control species groups’ that are known to feed only at sea are not showing similar AMR-positive results.

66.

The Derogation legislation (national and EU) for protection of public health and safety was written a long time ago and the import of the phrase *public health and safety* back then would likely not have been as complex or nuanced as it is today. Our UK and other EU neighbours all operate gull nest and egg removal in the urban setting using that public health and safety Derogation “for years” (DCHaG, December 2016).

67.

DCHaG declared itself as “non-competent in public health and safety” in response to PQs on gull issues, into the Dáil record last July, and was in possession of the Howth gulls Study (AMR in Wildlife – a public health concern) since 2015. DCHaG has itself taken actions on gull issues under the public health and safety Derogation without reference to any other Department, and has autonomously published the pertinent Derogation for over twenty years for many species excluding gulls – again without reference to any other Department (PQ reply to Darragh O’Brien, October 2016). Historically and at present DCHaG has the statutory responsibility to administer the Wildlife acts, including the public health and safety Derogation, and with a prosecutorial role.

68.

In October 2017 DCHaG referred two PQs (271 & 272, quoted above) directly to the Department of Health. To date DCHaG has not explained the obviously anomalies between its own history of making the legal Declarations of the public health and safety Derogation for over twenty years, its history of autonomously applying control measures on urban gulls for reasons of public health and safety, or against that long history of acting autonomously on the Derogation under its statutory control, including a prosecutorial function. What has changed to an extent that has caused the Department to declare itself non-competent in public health and safety and to cease its historical autonomous administration of the pertinent Derogation only in respect of gulls?

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69.

The following statements from DCHaG were reported in a FoI release made by the DCHaG in July 2016:

Seagulls are attacking hospital patients, threatening workers on rooftops and interfering with the drinking water supply, according to Government reports....an FoI response gives an insight into the growing problem permission was granted 11 times in 2014/15 to allow “control measures” — including destroying eggs and nests despite the seagull being a protected species. The Department approved removal of eggs and nests at a hospital in Drogheda, because gulls were “causing disturbance to staff and patients” who were “being attacked by nesting pairs”. The birds were also “soiling sensitive areas causing health and safety issues”. Nests were removed from Eir HQ in Dublin due to “damage to roof glass” and a “threat to staff working on the roof, causing a health and safety issue”. Dublin City Council scared gulls three times from the treated Reservoirs for Dublin, as they were “swimming and excreting” into open storage areas. NPWS removed eggs and destroyed nests at Wexford Harbour near a colony of little terns, as the larger gulls eat their eggs and chicks.

70.

All of the gull issues described in DCHaG’s direct interventions in the FoI statement – and several more besides - are being lived with for several months every year on an escalating basis in communities in Fingal North and wider around the country where rapidly growing gull colonies have chosen to live and breed in urban settings. CiB does not understand why DCHaG has withheld the EU Derogation’s ‘public health’ criterion from the Balbriggan Derogation, based on closely comparable evidence on a very large scale with what is described in the FoI article as having been undertaken autonomously by DCHaG.

71.

CiB researched in detail the situation in the UK and Northern Europe and established through official government and legal documents that gull nest and egg removal is in fact the prevalent non-harm control measure under the EU Birds Directive that is widely used across the UK and Northern Europe – specifically Article 9 1 a) i) – the Derogation for reasons of public health and safety. And this has been the situation for years.

72.

The additional AMR evidence provided in this section of our Report seems clear and 4b a) acknowledge the ‘public health’ criterion as specified in the Derogation legislation, and b) make the Derogation available to all communities being negatively impacted by expanding urban gull colonies. This must be done in good time for the 2018.19 Derogation in order to avoid the needless confusion and danger to citizens caused by the lateness of the 2017.18 Derogation.

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73.

If DCHaG expect FCC to be in a position to get involved in solutions – a response DCHaG called for from FCC in PQ replies throughout summer 2016 and in media statements around the implementation of the 2017.18 Derogation – DCHaG will need to recognise in their timing and announcement for the 2018.19 Derogation, that FCC would most likely have to seek resources and issue a public tender to acquire and contract for managed services.

74.

CiB fully understands that the urban gull issue is complex and multifaceted and believe that it will require an official response that shows vision, wisdom and constructive co-operation between DCHaG, FCC, other local Authorities, and indeed other Departments and Agencies - and all sectors of affected communities. This Report from the Balbriggan community is our latest attempt to convince the civil authorities as to what is now urgently needed to begin addressing the urban gull issue.

6.

urban roof-top nesting by gulls

simple truths and plain logic

1.

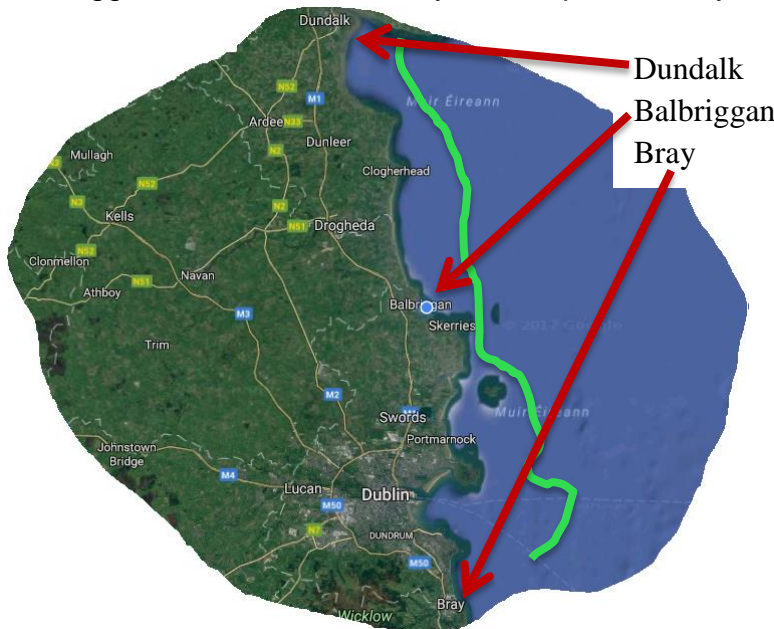
Gulls do not **need** urban locations to nest and breed. They are preferring urban life as easier than seaward life and because they are not being resisted. At this stage urban gulls – being at the top of avian intelligence - have little fear of people. The absence of resistance by people has allowed a potent wild species to proliferate in expanding areas of human habitat. The escalating negative impacts from gull issues on communities are unacceptable.

2.

There were just 209 rooftop gulls nests recorded nationally in 2002 (BWI, Seabird 2000).

4.

Gulls can forage over 100km round trips. They can easily forage the same range from seaward habitat as they can from urban roofs. The map covers a 50Km radius from Balbriggan, to Dundalk, to Bray, inland past Athboy, and almost across to Holyhead.



GPS Gull Tracking Experiment, 2014.

Four adult herring gulls (two males, two females) were fitted with GPS tags in May 2014 in the seaside town of St Ives, Cornwall (breeding colony c 250 pairs), and tracked for c 100 days during the 2014 breeding season.....the results highlight how variable movement behaviour was among individuals: whilst one bird roamed widely (90% range estimate = 560 km²), heading >50 km offshore and often active at night or roosting at sea, two birds had small ranges (<10 km²),with the fourth displaying intermediate behaviour. All of the birds regularly utilised a few key sites within the agricultural landscape of St Ives. Peter Rock, UK Gull Expert, 2014.

5.

The **green line** on the map tracks 90km of coastline with ample remote pristine rocks, cliff, escarpments and scrub flats – i.e. traditional gull habitat. Thousands of ex-landfill gulls choosing to live in towns and cities (DCHaG, Fol, July 2016) were not “persecuted” (Seabird 2000) from the coast and there is nothing to stop them living on it.

6.

Gulls have traded accommodation up without resistance, preferring our homes, schools, restaurants, supermarkets, factories and apartment block roofs, and they will continue to densely colonise urban settings, marring the lives of communities, until they are resisted.

People are reclaiming uninterrupted nightly sleep, freedom to use and maintain their homes and gardens in comfort, safety, and a reasonable level of ambient, healthy cleanliness around their living spaces – i.e. ordinary, civilised, daily life. Ireland is the only country in Northern Europe forcing citizens to concede their living spaces to, and bear serious public health and safety risks from a dangerous pest species.

7. gulls and food, people and policy

what and where are the truths in all of this?

1.

One common epithet spoken about the urban gull problem is that “*this is because of people feeding gulls*” or some version of that phrase, and that “makes gulls associate food with people”. This was the excuse offered by BWI in Howth on Sunday 26th November 2017 when two young women received facial and mouth injuries, one requiring tetanus and antibiotics, by aggressively foraging gulls – and the gulls “were only looking for grub”; mind you it was also acknowledged that gulls are big birds and they can do damage – this media article is repeated later in this section.

CiB dismantle following the phrase “*this is because of people feeding gulls*”. Also, It is worth re-stating that the urban gull issue has figured in a national parliament debate in Westminster (February 2017), and in the Dutch Supreme Court (August 2016) – i.e. it is a serious problem and the claim that people are feeding thousands of gulls is the cause of the urban gull problem is in CiB’s view facile in the extreme and delusional.

2.

Urban gulls are obviously getting ample food from somewhere and thriving on the sources – that is a common-sensed fact. Let’s look at some other facts, and ask some questions:

- a) the vast majority of people do not systematically feed gulls - the few people who do so in their localities are perpetrating a misguided kindness and storing up problems for themselves and their neighbours as the gulls exploit that kindness and move in
- b) in some cases food waste management is delinquent and local gulls will always exploit such opportunities;
- c) In public spaces, parks, amenities - some people feed birds including gulls and species will also habituate around that opportunity;
- d) in some cases people litter unfinished food on the street and this is scavenged by birds, including gulls;
- e) landfill-based sources of whatever food calibre are disappearing, but in Ireland, we still have landfill, and forty four major raw sewerage outlets, almost all of which are around our coast, and are frequented and foraged by gulls;
- f) urban-living gulls in the very high thousands are foraging many diverse food sources on up to 100km round trips, and will scavenge and/or hunt for anything they can find, catch and kill.

(Coulson, <http://www.bioone.org/doi/pdf/10.1675/063.038.0411>)

(Rock, 2016 & 2003),

<http://www.tandfonline.com/doi/abs/10.1080/03078698.2016.1197698?journalCode=tram20>)

<http://www.gull-research.org/papers/peter01.html>

3.

In case a) above, suppose the neighbours go along to the person feeding the gulls and asks the person to stop doing this. And suppose the person says that it is their decision

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gulls and food, people and policy

what and where are the truths in all of this?

and their right to do this, and ignores the fact that s/he is encouraging gulls into the area to nest and, then live and then form colonies. What do the authorities expect the neighbours to do about that? Do they expect confrontation, vigilantism or other forms of social pressure? If example a) is perceived by the civil authorities as a genuine contributor to the problem, what is done to address that situation? Absolutely nothing.

In all of our neighbouring jurisdictions, the authorities in regions affected by this problem conduct constant, extensive publicity campaigns with specific advertising and signage. Some Councils have started using Public Space Protection Orders and Anti-Social Behaviour Orders. Some Councils have brought in web-based reporting systems for feeding tip-offs and fines with follow up prosecution options.

In case b) above, how often do we see overflowing, large commercial bins with food waste? How often do we see flimsy black bags ripped open on our streets? What happens if a well-meaning staff-member at a food business tips out waste food for birds, including gulls? How often are premises inspected, and how often is enforcement action taken under existing legislation and licencing regulations to ensure best practices and compliance? Do we have specific, persistent publicity materials stating not to feed gulls and to manage waste accordingly? No we do not.

In our neighbouring jurisdictions, special anti-gull bin bags are increasingly mandatory, Council and Municipal authorities are proactive with publicity, communications, signage and enforcement, the Dutch are going underground with bins

5.

In case c) above – do we have any signage for “Do not feed the gulls”? Do we have any enforcement of that message? The only signs seen in a Dublin walkabout by CiB members were a few A4 Sheets put up by staff in The Mater and Beaumont Hospitals. CiB understands that, following representation from the Howth TDs, FCC may be arranging for signs to be put up on the pier in Howth - no enforcement is planned.

6.

In case d), anti-litter laws are being used to penalise food litterers and enforced in the UK and Northern Europe. East Devon Council has a Web-based reporting form specifically for reporting the feeding of gulls, fines, and prosecution options. Do we have any efforts whatsoever in place on this aspect of the problem. No we do not.

7.

Case e) is the most interesting in the opinion of CiB, as we believe that we are dealing with ex-landfill gulls (also ref. DCHaG FoI release July 2016) that had long deserted seaward habitat, but possibly nobody knew where they were living or breeding for years if they had left the coast and wetlands. There are very strange gaps between the

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Seabird 2000 Census low point figures of 5,411 seaward pairs, 209 roof-nesting pairs, and the thousands of gulls recorded (filmed) on landfills through the 2000s (verified to CiB by retired Balleally landfill workers) and that compelled the EPA to enforce Bird Controls as a waste-management licencing pre-condition.

7.

On BBC 2 Springwatch 2017, Episode 8 Pete Rock described the foraging behaviour of some GPS tagged gulls, also reported in the Guardian <https://www.theguardian.com/environment/2016/jul/14/gps-tags-reveal-the-secret-life-of-urban-seagulls>

8.

Although only a small study, the significant point was that gulls have elaborate foraging behaviours over huge distances, and town food scraps were merely **bonus snacks**. The significant point is that the foraging range of gulls, both in terms of distance and of acceptable food-sources, is huge and impressive. Our farmers will tell you that it is often mostly gulls now following their tractors in fields; we see flocks of gulls on our sports pitches and amenity areas foraging (and defecating profusely) first thing in the morning. Gulls are not dependent on 'feeding by people'. And as postulated in Section 7 above, the main attractions of roof nesting are the relative quality and safety of the accommodation compared to seaward habitat – because gulls have not been meeting resistance from people yet.

9.

If you do an internet search for “UK signs for don't feed the gulls” here's a snapshot of what returns from the search, and this goes on for web-page after page, and there is increased enforcement of this policy across the UK.



We have virtually no such signage erected in Ireland. The BBC, the UK National public service TV station regularly features material about gulls – there is a Youtube clip and a

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photographic excerpt from the 2016 Cornwall Documentary on urban gulls in this Report illustrating the reality and dangers of aggressive foraging by gulls.

There is no national consciousness yet of the urban gull issue in Ireland, but this is changing now, with possibly the most ever coverage on radio and press media in 2017.

10.

A complex, macro food model combined with species intelligence and diversification is obviously sustaining rapid growth in urban-living gull colonies. High density colonies are causing serious problems in communities. Current DCHaG policy is forcing communities to house and live with rampaging urban gull colonies against their will.

11.

If some big food reduction initiative was devised and succeeded, what would happen? Herring gulls have in fact already answered that question when you look at what the species did when seaward habit ceased to sustain them. The common analysis - and the tangible outcomes in our towns and cities - points to impressive relocation and diversification by the species. We are already witnessing increased food competition among gulls, more aggressive foraging injuring people, and wider predation of other fauna, on a relentless march inland. Gulls are in past the Naul, into Meath, in Tallaght and Inchicore, and in Athlone in the heart of the midlands.

<https://www.irishtimes.com/news/ireland/irish-news/new-eu-fishing-rules-may-be-drawing-seagulls-inland-1.2305615>

12.

The only construction CiB can put on the conservationists' 'food/feeding' arguments are that they have a superficial kind of logic and plausibility when heard by the wider public who don't experience gull issues. Therefore it may be awkward to deny policy attention to these arguments, it will take years to ramp up signage, general publicity, education, further-enhanced waste management etc., and this might buy significant time to get resources and achieve more putative research that might produce a silver bullet for the problem. And in the meantime communities can continue to live with escalating, horrendous conditions for several months every year, for several more years. That is an unacceptable scenario to communities living with serious gull issues.

Public policy and operational practices in Ireland need to catch up quickly on the recognition and handling of the urban gull situation, in the legitimate interests of human communities and public health and safety.

8.

the benefit of hindsight

deficient, lagging, public policy

1.

In this Section, CiB asks our civil authorities to avail of the benefit of the hindsight that is now available. There is fairly unanimous agreement that human behaviours have been and continue to be responsible for decline and extinctions in wildlife species. Historically In the case of herring gulls, overfishing and by-catch management changes are attributed to the seaward species' decline and to the gulls moving inland in pursuit of food.

2.

The photograph below (unattributed, internet) shows massing gulls foraging on a landfill. Similar images have been captured around the world and FCC has a DVD from Balleally landfill that is consistent with this image. Retired workers who drove the machines and lorries on Balleally confirmed to CiB that this image is consistent with their experience. Balleally closed in winter 2012/13. The following extract is from a Freedom of Information (Fol) Statement issued by DCHaG in July 2016:

“Although they can at times be a nuisance, seagulls are nonetheless a protected species. Numbers have declined in recent years and the Department does not have any plans to reduce the population.” She (the spokeswoman) said the closure of municipal dumps around the country means an increasing shift in the remaining gull population towards rooftop nesting in towns.

Note the official stated awareness of and reasons for gulls urbanising. Also note the stated policy intentions of DCHaG despite the fact that Balbriggan people had notified the Department of major gull issues two months prior to the Department's Fol statement.

3.

Thus, implicitly acknowledged by DCHaG's Fol statement, escalation of gull issues in Fingal towns began when dump-scavenging gulls moved into towns seeking new food sources. The gulls encountered no resistance because of DCHaG's twenty+ year old policy that pre-dates the urban gull phenomenon, and gulls have colonised in all urban settings (residential, schools, businesses, and clubs et al. in expanding numbers. The negative impacts on communities are far worse than *“at times a nuisance”*.



This is one what is described as *anthropogenic sources of AMR* in section 5 above.

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4.

Expert International analysis consistently attributes the urban gull problem to a complex mix of long-term, errant, negligent, and imprudent human activity and waste management practices, citing intensive fishing, changes to fishing by-catch management, species adaptation to exploit agricultural food sources, 'easy pickings', human food ('brown' waste'), general landfill, untreated sewerage, careless bin practices, deliberate human food litter and systematic feeding of gulls by some people.

5.

Most people encounter gulls singularly or in small groups briefly on a street, in a park, foraging at a café, or at a shopping place and seldom see any reasons for concern. Their screeching is remarked upon ruefully but forgotten a minute after the gull(s) fly off.

Communities living every day and night for many months every year with expanding gull colonies experience gull interactions on a totally different level. The true impacts were fully described in the campaign and are discussed again in this Report.

6.

CiB believe it is fair to say that the situation in impacted communities has not been properly investigated, monitored or reported and is therefore not realised or understood in the media or by the general public, or indeed by policy makers. At some point, and the sooner the better for impacted communities, hindsight will acknowledge this assessment.

7.

Incidents of aggressive foraging by gulls and/or injuries up to recently have invariably reported as cheeky opportunism or quirky little accidents with mock portents of doom and a humorous sub-text. Flippant, shallow media treatment of the issue creates an atmosphere that is not conducive to open, reasonable, rational debate. CiB believes that hindsight will see much of the media handling of gull issues as having been shallow, irresponsible, lacking rigour and vigilance, and of a quality that has suppressed and delayed realisation of the seriousness of the issues.

8.

In addition to the negative impacts on communities, gulls are preying on and taking over the habitat of other fauna – the protection of which is legislated for in the EU Derogations. St. Stephen's Green, Dublin has been a glaring microcosm of this fact for years now, proving the decimation by gulls of many other bird species on the lakes.

Gulls are moving inland, taking over the fields and colonising **un-resisted**. Predation of smaller birds by gulls and rapid habitat encroachment seems to be being ignored.

9.

DCHaG is persisting with a long-running, deficient and lagging policy that is wholly at odds with the policy and operational practices of our neighbours in Northern Ireland. Scotland, England, Wales, France, Holland and Denmark – "for years" as acknowledged by DCHaG in December 2016 - under the exact same EU Birds Directive as is cited by DCHaG to CiB in July 2016 as the reasons gulls "enjoy" protection.

9.

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Unwise human behaviour both had a causal role in the decline and displacement of the herring gull from seaward habitat, in 'artificially' creating the urban-adapted version of the species and in allowing an urban pest to become established and entrenched. Herring gulls are now prolific and ubiquitous because the intelligent, opportunistic species recognised non-resistance from humans, overcame their fear of us, and have discovered a cornucopia of human waste, new inland habitat and new prey species.

11.

A sea change in waste management practices suddenly and hugely reduced what were massive, staple food sources for gulls. This food loss forced gulls into towns and cities looking for food. They discovered that town life is comfortable, and that they can colonise in towns un-resisted – facts that have resulted in the gulls urbanising in huge numbers. High density, expanding colonies now live, breed, and forage aggressively in very close proximity to people, inflicting serious negative impacts on communities and exhibiting the full gamut of wild behaviour.

12.

Bird conservationists seem to instinctively down-play (three attached mp3 radio interviews) and diminish the impacts of high-density urban gull colonies on communities although experienced field officers must know the reality for people affected by this situation. Apparently communities are expected to acclimatise to the situation in the interest of the gulls because human activity is responsible for their claimed *decline*, even though high numbers of gulls in urban areas are generally acknowledged. People are not willing to acclimatise to serious public health and safety risks, property damage, denial of the normal use of their homes, gardens, schools, and amenities, and the marring of daily life and nightly sleep for several months every summer.

13.

Elected public representatives have been understandably wary of the issue, and some from regions not affected by the issue pillory colleagues who speak up about it. Fingal North TDs and Councillors have acted on the issue, and CiB note that Howth TDs have also made representations and the issue has featured on Dublin City Council's agenda.

14.

For the most part, the media either trivialise or sensationalise gull issues, and make fun of politicians who seek to draw attention to this escalating problem. Documentaries and feature articles tend to be from the ecology perspective. The real impacts of large, expanding gull colonies living and breeding in communities has not been properly examined, and remains grossly underestimated. A wiser media approach is needed.

15.

The law of unintended consequences exacerbated by long-time lagging policy and old procedures that were devised to recover species claimed to be in extremis, have conflated and now continue to facilitate what is a major, escalating urban gull problem.

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16.

The cacophony 24/7 for up to seven months of the year, the constant, ubiquitous and dense soiling of human living areas, aggression, attacks, impacts on schools, children, businesses, clubs, and major damage being caused by gull colonies are cumulatively uncivilised and hazardous living conditions. If the face of these serious, escalating issues and the rapid expansion of urban gull colonies, CiB contend that DCHaG policy is both lagging and deficient to a degree that is now seriously hurting communities. Hindsight will show this assessment to be correct, the more-so the longer the status quo prevails. The AMR evidence presented in Section 5 above amplifies the need for action on this issue.

17.

Civil Authorities in the UK and Northern Europe are far ahead of Ireland at both policy and operational levels. Ireland's delay in recognising and dealing with the issue may, perhaps, be related to our Derogation to delay waste management improvements – meaning we are arriving relatively new to this problem as we close landfill, and perhaps also due to long-term, deep resource cuts in our responsible competent authorities. CiB acknowledges the facts about DCHaG's swinging resource cuts since 2007 as described in the Department's Oireachtas oversight committee debates:

https://beta.oireachtas.ie/en/debates/debate/joint_committee_on_arts_heritage_regiona_l_rural_and_gaeltacht_affairs/2017-07-05/2/

18.

Nonetheless, policy required in respect of the gull issue does not seem to be particularly onerous. Several bird species have been subject to the public health and safety Derogation for years and DCHaG has confirmed in PQ replies that adding or removing species to/from the list can readily be done in response to new information. CiB reasonably ask how much more new information does DCHaG need in relation to urban gull issues and the risks they are posing to public health and safety?

19.

Our society is sleep-walking into major problems with urban gulls due to deficient, lagging public policy on the part of the civil authorities that have the duty, responsibility and public trust to surveil, identify and address such problems, and that have abundant, verifiable evidence for a considerable time now of the urgent need to act on this problem in the interests of public health and safety.

20.

There is no administrative or public resistance to the Birds Directive article 9.1.a ii) lethal measures for the prevention of bird strikes on airplanes because public mindfulness and understanding of that risk is universal. However, paragraph 9.1.a i) – the highest priority in Article 9 – the public health and safety criteria - are not in the consciousness of the wider public because they don't experience serious gull issues.

21.

CiB summarise again here the usual, indeed automatic statements thrown out from the conservation side, and counter each one with facts and direct experience:

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22.

“Herring gull numbers are 90% depleted”.

*that 90% figure came from Seabird 2000 17 years ago
applied to seaward habitat only
and the urban gulls count in 2002 was 209 pairs/nests in the Republic.
It is very, very (statistically) difficult to find a meaningful extrapolation
that takes you from 90% depletion, and 209 counted urban pairs in 2002 to what we clearly
have today.....*

CiB note the following statement in a PQ reply to Clare Daly in November 2017:

“As many gulls feed inland, they may not be recorded in urban or coastal wetlands.”

*One wonders if Seabird 2000s 90% depletion figure didn't count gulls exploiting inland
landfills.*

..”they can be a bit noisy for a few weeks in the summer and go away in August”

*in colony situations, gulls start territorial claims as early as February,
with large clusters of nests by April in many areas
chicks hatch towards the end of May, fledge in July
hang around until at least September, but increasingly staying and wintering here
cacophony starts before dawn every day and persists 24/7 for months on end,
so the truth is that urban gulls are becoming a 24/7/365 issue*

“there are very high numbers in some urban areas, but overall numbers are down”

*very high numbers in urban areas are an unacceptable problem – this is a fact,
unless some form of “gull whisperer” appears to train gulls back to seaward habitat
what sense is supposed to be made from that statement?*

“fouling and minor damage is not an acceptable reason for acting against gulls”

*Common sense would tell most people that such a general statement
devised twenty plus years ago was intended for occasional nests-in-the-wrong-place
Does BWI intend to hold that line for the “very high numbers in urban areas?”
are we expected to live with AMR-laden faecal contamination on our living spaces?
who gets to judge that regular incidents of €000s worth of damage
e.g. destroyed solar panels and major flooding is “minor” damage?*

23.

CiB are concerned there may be a *conservation* strategy to finesse high-density urban gull populations into being accepted by society as a valid entity to be cherished as natural wildlife. Bird conservationists diminish and trivialise species impacts on communities being forced to house urban colonies against their will and with unacceptable conditions and risks. This occurs essentially under the radar of a wider general public that is, nonetheless, gradually becoming conscious of escalating issues with urban gulls. People will not accept indefinitely the hugely negative nature and scale – escalating rapidly – of gull issues and impacts on their communities. And nobody has the right to inflict such conditions on our communities in the interests of a species that is widely acknowledged as a rampant pest species in the urban setting.

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25.

The title of this Section of the Report aims to inspire thoughtfulness and honesty. This is not a 'blame' situation – at least not yet. Communities being impacted by gull issues are – to borrow an old bird analogy - 'the canaries in the mine' for the rest of society. Hopefully the distress, fears and risks being described will be properly heard now.

26.

The urban gull problem that exists today was seeded a long time ago and inadvertently cultivated by what hindsight now acknowledges to be a litany of irresponsible human behaviours and careless mistakes, viz. over-fishing and bycatch practices, food and habitat destruction, long-term careless human waste management (landfill, sewerage, food litter) – all conspiring to create the urban gull situation, because the species has been smart and resilient enough to adapt and exploit (un-resisted) urban opportunities.

27.

A policy, legislation and enforcement pendulum swung sharply in favour of conservation and protection measures twenty years and more ago to redress some of the negative impacts of irresponsible human behaviour on wildlife. And that pendulum has got stuck there despite clear evidence of a need for change now. In parallel on this timeline, shallow and fickle media attention, ultra-wary political attitudes and some facile conservation arguments e.g. about feeding of gulls have all contributed to this now difficult problem. Public policy, procedures and operational practices have all lagged well behind what is actually needed now. These are facts that are all clearly visible now to those who will see - in the light that is shone by evidence and hindsight.

28.

As if to resolutely top this analysis, the recent upgrading of the AMR threat to being both global and extremely serious has now amplified the concerns in our community. And as for that AMR threat, examined with the benefit of hindsight, it too is clearly at its worst now due long-term irresponsible human behaviours viz. the mismanagement and misuse of antibiotics, and the AMR laden human waste they produce.

29.

There can be no genuine conflict of interest or indeed equivalence between the rights of birds and the rights of people where ordinary daily life is being badly marred for communities and public health and safety is being seriously compromised, especially when the only remedy being sought as an initial prudent measure to protect citizens is the prevalent non harm measure across all of Northern Europe.

30.

Now that the benefit of hindsight is actually available, and the weight of evidence is so substantial, it is time for a strategic policy change and robust operational decisions to be made and implemented – in the legitimate interests of people.

9. conclusions & recommendations

and what happens next?

1. The conclusions from the Report (numbered by Section) are:
 1. The 2017.18 Derogation (Schedule 2) Declaration, although limited and late in its implementation, was welcomed by the community in Balbriggan with considerable relief. Continuation of an up-scaled Derogation in future years is essential until the urban gull problem is under assured continued control.
 - 2.1 The sustained high level of support for the Balbriggan campaign in the community and from all of the elected national and local public representatives validates the seriousness of the impacts of the urban gull problem and in particular, the public health and safety concerns engendered by the problem.
 - 2.2 The passing unchallenged in October 2017 of the gull issue related Council motion and the follow up actions taken by FCC in writing to DCHaG and DHLGP are further validation of the determination in the community to seek good solutions to the problem.
 - 2.4 A further Council motion calling on FCC to seek information and advice from Councils and Municipalities in the UK and Northern Europe on their handling of urban gull issues, scheduled for the December Council Area meeting, also shows the determination of the community to achieve a solution.
 - 2.5 Clearly, the Balbriggan community will continue their activism on this issue until an acceptable, sustained solution is in place.
 - 2.6 The evidence (licences, operational practices and case examples) for the prevalence of the Derogation for nest and egg removal for reasons of public health and safety across impacted regions in the UK and Northern Europe is incontrovertible, and unanswered to date by DCHaG as to why the same situation should not apply here in Ireland, for the same circumstances, under the same EU legislation, and under the stated 'One Health' policy objective for all member states.
 - 3.1 The usage statistics provided from a small part of the zoned area in Schedule 2 showing the use of the Derogation, substantively, compellingly and incontestably validate the need for the Derogation, and its continuation, given the known colonising and breeding behaviours of herring gulls.
 - 3.2 The details of the case studies starkly convey some of the worst impacts of the gull issues on the community, and further justify the need for its up-scaling to

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acknowledge the health criterion of the legal EU Derogation clause and its continuation until the problem is under sustained and assured control.

3.3

DCHaG's *case-by-case* procedure for handling wildlife issues could not have a practicable role in dealing with these issues. The volume of issues (especially extrapolating from the small area reported to Skerries, Howth and around the country as acknowledged by FCC) could not realistically be resourced, processed and acted upon on a '*case-by-case*' basis in a timely manner.

3.4

Clearly the displacement of ninety-nine breeding pairs and up to two hundred and fifty four hatchings, along with the observed additional displacement of 'groups' of juvenile non-breeding gulls had an amelioration effect on issues such as noise, fouling, aggressive foraging (affirming that the safety criterion as granted in the Derogation was necessary), and damage in the treated areas.

3.5

Levels of roadkill of fledgling gulls reported in the wider districts support the claim that the Derogation was underused in areas outside of the campaign coverage.

3.6

The documented serious, negative impacts on the Balbriggan community echo the experiences across the UK and Northern Europe where, unlike here in Ireland, policy, procedures and operational practices in impacted regions all avail of the public health and safety Derogation provided in the EU Birds Directive, using a general licencing approach as distinct from a *case-by-case* approach.

3.7

The evidence provided of gulls' (and geese's) loafing and resting behaviours on amenity areas and crop-fields requires careful attention in the light of the two Irish AMR studies (and indeed the international studies) in which serious and consistent evidence-based concerns are raised about AMR-laden faecal contamination. Nest and egg removal offers a degree of separation from risk in residential and business settings, but has no efficacy for loafing behaviours.

3.8

The comparison with the national total recorded rooftop nesting pairs (209) in Seabird 2000 and the statistics from the limited Derogation in a small area of Balbriggan is totally transparent and raises several questions. It would seem to be mathematically impossible to get from the 2002 figure to today's urban nesting figures. Is it possible that there a significant 'landfill' gull population already established by 2002 and not counted in Seabird 2000 because they weren't living on the coast or in wetlands? Refer to DCHaG PQ reply to Clare Daly, in October 2017 signalling that inland foraging gulls may not be counted in studies.

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3.9

The Balbriggan feedback regarding issues affecting businesses and reticence in that sphere about the gull issue should be noted by the Review group, as should the general lack of awareness about Derogations and DCHaG/NPWS role in these matters. The design of the public consultation phase of the Review needs to take these factors in to careful consideration.

3.10

Similarly, the feedback about schools needs very careful attention. Like the loafing issues, the nest and egg removal measure has no amelioration effect on aggressive foraging when the gulls are living in housing estates or on business campuses and only visiting the schools to forage. Is it policy to say that the status quo in schools (restricted yard break times and aggressive foraging and extensive fouling) must be lived with evermore as urban gull populations expand further un-resisted? This schools issue (like loafing behaviours on amenity areas and food-crop fields) presents a complex, difficult situation needing immediate and ongoing solutions in the interests of our school-going children.

4.1

The noise issue in high-density colony situations and its health impacts have historically been grossly underestimated and dismissed too lightly. The evidence provided from the RTE programme ‘Awake –The Science of Sleep’ is compelling and demands respect given the evidence contributed by an array of senior medical professionals qualified in the subject to that programme.

The Balbriggan community have voiced the noise concern consistently from several perspectives not least the health impacts on individuals and extraneous risks e.g. drowsy driving, as now clearly signalled by the Road Safety Authority in respect of sleep deprivation risks that impact on society generally.

It is reasonable to impute that the tolerance of some noise compelled by the legislation would have referred to an occasional nest here and there, lasting only a few weeks. The colony conditions witnessed in Balbriggan are of a different order of magnitude and of noise impact. The RTE programme was very clear about the science. It is totally unreasonable and unacceptable from a health impact perspective and a quality of life perspective to inflict sleep deprivation on entire families for several months every year. Nest and egg removal is a clear, permanent requirement for this reason because spikes - which are ineffective anyway in colony situations – do nothing to alleviate colony noise.

4.2

The escalation rate of the gull problem is well observed, considering it didn't exist in 2013. The obvious urban breeding success of the gulls has already reached a societal tipping point for such a broad-based, heavily supported, sustained campaign to have emerged. The list of impacts provided is seriously perturbing.

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4.3

The Balbriggan community makes a valid observation – there is no species of animal or bird that has ever been permitted – un-resisted - to cause the level of evidenced negative impacts on communities that are being experienced from urban gulls. This escalating problem must be addressed urgently.

5.1

The AMR evidence implicating urban gulls all over the world, and at home in the Irish studies, as a most perturbing, major public health concern is verifiable, incontrovertible and compelling.

5.2

Removal of gulls nests and eggs from too close proximity to people in urban settings is a reasonable non-harm measure that helps to separate and somewhat mitigate AMR risk. Every country in the UK and Northern Europe operates this policy and operational practice under the Birds Directive. The Arnold and Hassell strategic level studies are clear on AMR risks at the human and wildlife ‘interfaces’ and separation and mitigation of risk are acknowledged to be prudent measures.

5.3

The Balbriggan community have never called for harm measures against gulls. If the AMR threat does compel such measures into policy consideration, hindsight will definitely and rightly question the delay in implementing the only effective non-harm measure that left people in gull-impacted areas unnecessarily exposed to higher than ambient AMR risks.

6.1

There is irrefutable simple and plain logic in the Balbriggan community’s contention in Section 6. Gulls clearly do not need urban nesting to survive. Their proven foraging behaviours (100km roundtrips) mean they can operate just as effectively from traditional seaward habitat which remains abundant all around our coasts.

6.2

Urban gulls will not revert to seaward habitat (Peter Rock, ringing and observation studies). Only sustained, persistent resistance by people with behavioural consequences for gulls will push them away from being too close to people. Nest and egg removal is the lowest impact, effective non-harm measure available.

7.1

Compelling, logical points are made about the typical ‘food and feeding’ arguments often used to supposedly explain the urban gull problem.

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7.2.

Clearly there are societal issues around human behaviours, food waste management, food litter, deliberate feeding of gulls. Updates to policy and operational practices in a number of areas are needed. This also applies to public education, regulatory regimes and enforcement. Ireland is far behind our neighbours in many such regards.

7.3

The point is well made that urban gulls' diversification and intelligence already pose an increasing direct threat to other fauna and habitats especially if/as anthropogenic food sources are curtailed and removed; and the gulls' continued rapid expansion points to continued success in their survival strategies.

8.1

The section on hindsight rings true, for both its historical analysis of irresponsible human behaviours, and right up to today in terms of delayed recognition of the urban gull problem, deficient and lagging policy in the face of overwhelming evidence and international precedent, deficiencies in the media treatment of the issue, and a slow and wary political response to the issue – with the notable exception of the public representatives for Balbriggan who have all acted unanimously on the issue and the evidence, in the interests of their constituents.

8.2

The CiB observation that critical aspects of the AMR threat also stem from long-term irresponsible human behaviours with antibiotics is also correct.

9.

Conclusions In summary are that the Balbriggan community has assembled and presented a widely supported, evidence-based case that urban gull impacts on their community are creating uncivilised, dangerous and unacceptable conditions that are causing serious public health and safety risks and a deep marring of daily life, and have proven the need for a concerted policy and operational response from the civil authorities to address these issues. The wider and international evidence provided points to the true scale of this problem.

2. The recommendations arising from the report are that:

1. the 2017.18 Derogation be up-scaled to:
 - a) reflect the public health criterion in the Birds Directive, as well as safety
 - b) be timed and structured to facilitate the implementation of managed services on a multi-annual contracted basis by local authorities, in time for May 2018
 - c) address problematic urban gull behaviours over the next several years
 - d) extend to all communities similarly affected by the urban gull problem;

9.

conclusions & recommendations

and what happens next?

2. Recommendations, contd.

2. Local Authority-run managed services are implemented to professionally effect nest and egg removal programmes in each of the sectors of communities impacted by urban gull problems;
3. the official responses from the pertinent civil authorities (as circulated with this Report) to recommendations 1 and 2 are achieved in a concerted, composite way that enables a comprehensive Derogation solution to be implemented in good time for the 2018 breeding season which will commence in early March 2018. And therefore will require preparations to begin as early as January 2018;
4. a carefully and sensitively designed programme is introduced for schools in affected areas, given the complexity of the gull issue as it impacts on schools;
5. a high profile, sustained publicity and public education programme is conducted, explaining the need and justifications for the Derogation and required behaviours from all community sectors, and this programme should also include targeting of unwanted behaviours (all sectors) around food waste, litter and feeding of gulls;
6. the clear implication of urban gulls in AMR, including CPE, cited as the AMR variation “of most concern” in iNAP, requires highest priority and effective solutions to protect public health now and into the future. Given that AMR is stated to be a permanent and rapidly escalating threat and human interfaces with wildlife and the environment are encompassed in the threat geography, Derogation structures and timing will need to reflect these facts;
7. real measures confluent to genuine and successful conservation outcomes for urban gulls, wild geese and other AMR- implicated bird species should receive parallel attention and necessary resources; and,
8. the Derogations Review Project Team:
 1. should consider asking the Department of Education to issue a communication to schools seeking direct reports from all schools impacted by urban gulls issues;
 2. should consider a confidential channel in the public consultation methods being devised e.g. for business for commercially-sensitive reasons;
 3. should develop a custom briefing event specifically for media, run on an invitation basis, to seek to engender responsible and wiser reporting of issues in future;

9.

conclusions & recommendations

and what happens next?

2. Recommendations, contd.

4. should produce a comprehensive briefing for the houses of the Oireachtas, Local Authorities and County Councillors that fully informs all public representatives about all pertinent issues and provides best international practice based advice regarding public policy considerations on this issue; said advice to encompass species and habitat management policy in the Derogations sphere, and prudent, collaborative operational strategies for achieving required outcomes optimally.
-
3. What happens next?

CiB is seeking confirmation through further recent PQs that the AMR-gulls situation (recognition of the public health concern) will be incorporated in the iNAP processes as indicated in recent replies to PQ 271 and 272. As mentioned above such a confirmation would give great re-assurance to our community.

The community is asking for substantive responses to the conclusions and recommendations above from the circulated Departments and the HSE/HSPC and FCC in the contexts of a) the Derogation Process Review scheduled for early 2018, b) the May 1st 2018 renewal date for the legal Derogation Declaration, c) in relation to the potential inclusion of gull-related Antimicrobial Resistance public health issues in the deliberations of the National Interdepartmental AMR Consultative Committee formed as part of the D iNAP Project, and d) necessary undertakings and preparations in respect of Derogation licencing (DCHaG & potentially DoH) and/or operational managed services (DHPLG/FCC) that might apply in advance of and in respect of the 2018 Derogation Declaration.

As mentioned above, the community sees the 31st of January 2018 as a crucial date stamp because it needs to be clear by around that time what will be the position in relation to a comprehensive Derogation in time for FCC-managed services to be in place for the Spring 2018 gull breeding season. The confused and somewhat dangerous situations that resulted from the manner and timing of the 2017.18 Derogation announcement need to not be repeated in 2018.

10.

photographs and media articles the truth about what gulls are naturally capable of

Warning:

Some of the photographs in the following section are graphic in content and may be considered to be unpleasant and/or distasteful.

The reason that these photographs and media articles are shown here is to try convey to the uninitiated exactly what herring gulls are naturally capable of as wild creatures at the top of their species in terms of avian intelligence, potency and ruthlessness in their survival instincts.

Communities currently being compelled by deficient, lagging policy to accept large, rapidly expanding colonies of urban gulls and their negative impacts on daily life have had enough. This situation is escalating rapidly and public policy must change now promptly to place the wellbeing of people above that of a scavenging, urban pest species that was artificially created by years of human waste mismanagement, is posing serious risks to public health and safety and is badly marring daily life in affected communities for several months every year.

When you have viewed the photographs review the case studies. Can you think of any other species of animal or bird that has ever or would ever be tolerated in the urban setting with the level of negative impacts that urban gulls inflict on communities?

10.

photographs and media articles the truth about what gulls are naturally capable of

This and similar is the habitat where herring gulls belong. The mess and detritus from their nest naturally does not create any problems or health risks for the gulls

Ireland's coastline is virtually entirely comprised of such habitat, relatively remote and pristine for the most part – certainly more-so than urban habitat now favoured by gulls

Gulls can routinely forage for 100km roundtrips (GPS-tagged and proven) every day. They do not need urban rooftops to survive or from which to forage. They are choosing urban life because they find it easier and they are not being resisted because of DCHaG continues to interpret and apply legislation and regulations i.e. as if the species was endangered, based on fifteen year old data and twenty+ year old policies and procedures in the face of an urban population explosion that has been fuelled by human waste mismanagement.



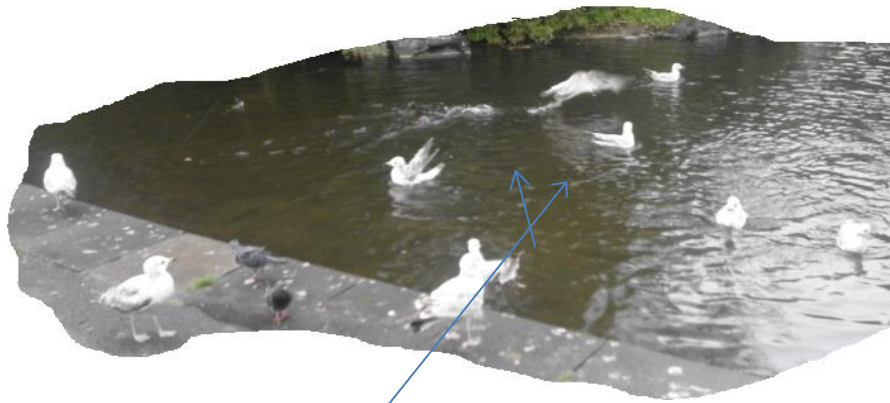
Herring gulls nesting in their natural habitat.

10.

photographs and media articles the truth about what gulls are naturally capable of

Herring gulls and predation of other fauna:

EU Derogation 9.1.a) iv) provides for the protection of fauna from any destructive wildlife species. DCHaG has used this Derogation to protect little terns on Wexford Beach from gulls. Virtually all small water fowl have been predated from Stephen's Green by herring gulls. In the past three years there is a very noticeable drop in small birds around estates in Balbriggan with high-density urban gull colonies.



This is Stephen's Green, summer 2017. The white birds are herring gulls. The blurred image is a gull about to land to try to predate a duckling scuttling away with a parent duck.



Stephen's green again, summer 2017. The white dots are herring gulls. There is one duck in the picture.



Stephen's Green Herring gull about to eat a duck chick

10.

photographs and media articles the truth about what gulls are naturally capable of

Predation of other fauna contd.



This is a foraging herring gull with a Kittiwake chick on its menu.
CiB sees gulls taking all kinds of other fauna, and domestic hen chicks



Herring Gull raids an
unattended neighbour's egg



Wild aggressive foraging behaviour on a residential street



Herring gull with pigeon in a shopping centre



Greater Black-backed Gull predates a
starling and nest of chicks.

10.

photographs and media articles the truth about what gulls are naturally capable of



This is a greater black backed gull about to eat a rat.



Juvenile gull with pigeon prey



This is a Herring gull in full threatening pose. Once of the Case studies in this report was facing having twelve adult gulls and 18 chicks on their semi-detached home and adjacent garage for up to seven months this year. You might look again at the inside cover photo on page 2, consider the fouling from twelve adult gulls and eighteen chicks for up to seven months (Case Study 2 above) on a single house and its surrounding, and consider the aggression and wild capabilities of the gull species, look at the international evidence, and ask yourself honestly do you see both a public health and a public safety threat from high-density urban gull colonies?

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photographs and media articles the truth about what gulls are naturally capable of



This is a herring gull taking down a dove in flight; in our estates we used to see this with starlings and blackbirds.



This Herring gull swallows this rabbit whole. Would you leave a small child in a buggy in your garden with an ice-cream if there were six nests and 18 hungry gull chicks on your property – as was the situation in Case Study No. 2 in Section 3b. above?



This is a herring gull with a tick infection. Gulls leave all sorts of parasite eggs in their nest detritus. In the UK , USA and Canada, under Health and Safety Authority Regulations, Workers encountering bird detritus e.g. on a roof must be provided with full Respiratory Protection Equipment suits, power-washing is prohibited, and surfaces must be chemically sealed and scraped clean. Ticks carry and transfer Lyme disease – a very serious, lifelong health impairment if contracted.

AMR bacteria can be airborne in dust from bird detritus, inhaled and ingested.

Workers with Respiratory ailments cannot be assigned to this work. **We have no similar**

Regulations for worker protection in Ireland.

CiB are presenting these images to show people what gulls are – viz. wild, un-medicated, potent, vicious, smart adaptive predators fully equipped to survive.

Like very many similar wild creatures, they do not belong in our housing estates or our schools or our food and amenity areas.

And gulls will not realise that until they are resisted with measures of sufficient deterrence consequences.

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photographs and media articles the truth about what gulls are naturally capable of

Photographs from Balbriggan:



This is one of five single, large gulls nests removed from a Service garage in Balbriggan beside a standard car tyre to convey scale – see Case Study 3 in section 3 of the report – the nests cause the business to be flooded in June 2016 when there was a torrential rainstorm.



This is a fledgling gull 2017 with its legs stuck down between the tubes on solar panels that were fitted to replace panels broken by gulls in 2015 – costing over €2,000 and which Insurance did not cover. The DSPCA sent a man out to try to rescue this chick and he could not go up on the roof because of extreme aggression from about a dozen gulls protecting the chick and he left the scene. It was a scorching day so the homeowner put a hose out through a window and sprayed the chick with cool water – the water soaked the chick and wetted its legs allowing it to get free unharmed.



Also from Case Study 3 in Section 3 of the report. In the heavy rains in June 2016, the hipped rooves of this complex filled up like baths between five single nests and one ‘agglomeration’ nest housing three or four pairs and burst through and flooded the premises closing it for two days.

10.

photographs and media articles the truth about what gulls are naturally capable of



This roof is the size of a football field. The white flecking on the pipe runs the length of the wall is seagull faeces – seen up close it is vile; the pipes have been stripped of their insulation by gulls for their nests. There are hundreds of metres of this run of pipes servicing a large plant installation. The General Manager of this store is at his wits end with gulls, their filth and their aggression towards staff, customers and workers who have to go on the roof to try to repair the damage to essential elements of the installation. There is so much filth on the roof at times that he is instinctively wary of power-washing because of the proximity of two very large schools. The big fan shows why the installation needs to be outdoors. The parapet pictured below is one of the gathering areas for gulls when the forty foot food delivery trucks arrive at the premises. In 2017, with the Schedule 2 Derogation, eight nests were removed from the roof repeatedly until the gulls relocated, and a total of thirty nests in the vicinity on other business were removed. There were similar colonies removed in a 200 meter radius from a pub/restaurant roof, and a car maintenance garage roof and a private institution's roof – in other words, a high density, high volume colony of gulls.. The beneficial effects were immediate and sustained over the summer. DCHaG authorised nest removal from the roofs of the EIR HQ and the Lourdes Hospital, and from the two Dublin treated water Reservoirs expressly and explicitly for reasons of public health and safety – to date of writing, DCHaG refuse to acknowledge the public health risk from this type of scenario. CiB continue through our TDs to ask DCHaG to explain their position, as yet unanswered.



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More from the same roof as above – all of these pipes have been stripped of insulation by gulls. The faecal contamination is rife and any work by contractors on the roof is dangerous from April through late July. This year, eight nests were removed (repeatedly until the birds left) and the situation was much improved on the roof for workers and on the ground for customers and staff.

CiB are aware of many businesses with serious gull problems. In our view, these businesses will most likely need a publicly transparent State-based initiative on action on gulls to be brought forward before they will engage on the issue, and in the meantime they will either grin and bear it or adopt quiet, private solutions. <http://connachttribune.ie/landfill-to-use-birds-of-prey-to-tackle-gulls-menace095/>

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From Case Study 1, page

House incursion, Balbriggan, (four times in the spaces of a few weeks:



Two stills from a video of a large adult male Herring gull in a kitchen in a Balbriggan house (for the fourth time) after already scaring off the family dog and eating its food. This gull was the 'boss' on the roof next door with three nests. These nests were removed this year (three times) and he and his entourage including around 15 juvenile gulls eventually gave up and left.



From Case study 1, Page 19.



All told, four sets of spikes were erected on this part of this Balbriggan roof where three nests were removed this year. The gulls bent and broke the spikes and build on top of them



In addition to the three nests, there was an entourage of about 15 juvenile gulls, probably two and three year olds based on their plumage. These were not breeding, but were hanging around all day and night. The racket and filth from February until the nests were removed was incredible. The dominant male on this roof went into a neighbouring house four times. Four grandchildren under five in a neighbour's house were afraid to play out in their own gardens. Conservationists claim that gulls are only aggressive when defending chicks – that is nonsense. Territorial and food aggression are now facts of life as well. One comment back from parents and grandparents to Conservationists is that they will become justifiably aggressive in protecting their children if necessary – and they should wake up and realise that nest and egg removal is a relatively gentle non-harm measure that does make the gulls move away.



A poorly maintained bin and a rewarded herring gull. Conservationists say “this is the problem”. That is nonsense. There are thousands of gulls in our towns since the big landfills closed.

10.

photographs and media articles the truth about what gulls are naturally capable of



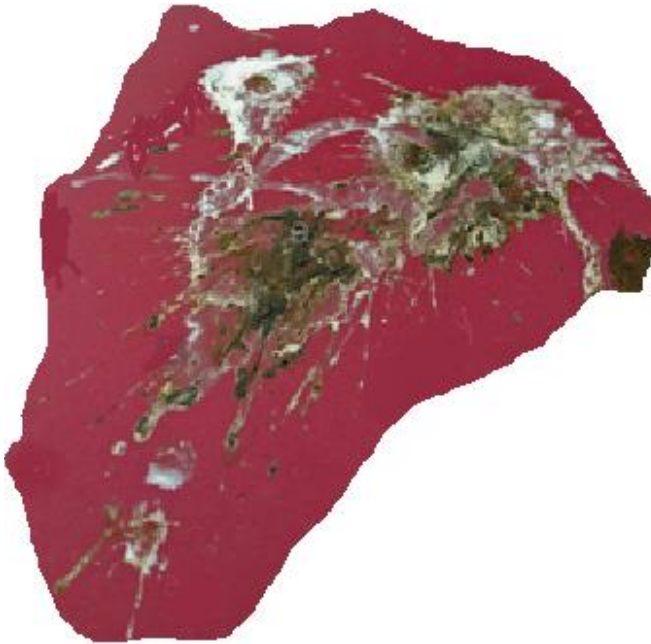
Food aggression is now a fact in this problem due to very high numbers of gulls and diminishing food opportunities as waste management practices improve; ergo gulls in our fields, and gulls eating any other fauna they can catch.



Herring gulls loafing on the roof of a sports stadium. The black flecks are faeces. The Environmental statement for the stadium says that all rainwater on the roof is collected in tanks for irrigation of the playing field

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photographs and media articles the truth about what gulls are naturally capable of



This is Herring gull faeces on the lid of a wheelie bin.

Picture the levels of fouling to be expected around a house in Case Study 1 in section 3 of this report, where six adult pairs nested and were set to raise Eighteen chicks on one house and garage/



This is another image (internet) of gulls foraging on a landfill. DCHaG has acknowledged that gulls move into towns when landfill closes – i.e. not back to seaward habitat.



This is gull faeces from a large colony on a roof with solar panels. (Internet, unattributed). CiB have provided examples where gulls stripped insulation from solar panels, break them and cause leaks into attics.

10.

photographs and media articles the truth about what gulls are naturally capable of



This scene is in the carpark shared by a supermarket and four takeaway restaurants. This is one of anything up to thirty gulls that will flock and forage aggressively in this space if any food is available.

A woman returning to her car was struck on the head by a gull causing her to stumble and fall to the ground. And the gull ripped open her sliced pan and made off with what he could carry – it was not protecting its young. There are several food-waste bins in this area, though they are usually well sealed and the area is kept clean. There are three schools within less than 200 metres of this photograph – and the gulls forage aggressively at all three of them.

This summer, 30 or more nests were removed from this area (first interventions) and this has made a huge difference to the issues experienced throughout the summer



Is this not aggressive foraging?

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photographs and media articles the truth about what gulls are naturally capable of



Internet, unattributed,
So don't leave your patio door open during the summer months?



Internet, unattributed.
Throw out the play mats?
Oh was this Herring gull on a sewer earlier this morning, or
predating rodents? And might there be a contact risk to the infant
or child that will play on this mat later. Perhaps we have to keep
our doors and windows closed through the summer?

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A man from Cornwall says he's too scared to leave his home after a series of attacks by seagulls.

In the latest incident, Barry Poore from Newquay suffered a dislocated shoulder and cuts to his hands when he was dive-bombed by a flock of gulls near his work.

Mr. Poore told us he's staying inside following a warning that any sudden movement could put his shoulder out again.

A teacher was left terrified with a bloodied and bruised lip when a seagull attacked her – as it tried to rip a sausage roll from her mouth. Chantelle Bradshaw, 31, was walking in Victoria Road West, Cleveleys, with partner Steve Connolly and their 16-month-old son Max when the bird swooped.



DUNDEE Radio presenter, Gary Robinson attacked by a herring gull at 5:30am in the morning going to work – injuries from his resulting fall.



Experienced RSPB officer Martin Cade attacked by two gulls when trying to rescue a chick

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photographs and media articles the truth about what gulls are naturally capable of

various injuries and aggressive foraging.

Teenage girl is airlifted to hospital after plunging 15ft off harbour wall to escape a SEAGULL that was trying to steal her ice cream
Teenage girl, 18, falls 15ft off wall in Cornwall after seagull attacked her
Witnesses said she 'panicked' when bird tried to steal her ice cream
She was airlifted to Royal Cornwall Hospital with suspected spinal injuries
Locals have described seagulls as 'a huge problem' in the harbour area

Read more: <http://www.dailymail.co.uk/news/article-3688239/Teenage-girl-plunges-15ft-harbour-wall-escape-SEAGULL-trying-steal-ice-cream-airlifted-hospital-injuries.html#ixzz4x649SLbj>

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This could just as easily happen in Howth where constant aggressive foraging by masses of gulls is a daily fact of life. Two young families were attacked by foraging gulls and both mothers were injured – 26th November 2017.



This is a still from a BBC Documentary.

<https://www.youtube.com/watch?v=vaGaA7J7Q-c>

10.

photographs and media articles the truth about what gulls are naturally capable of



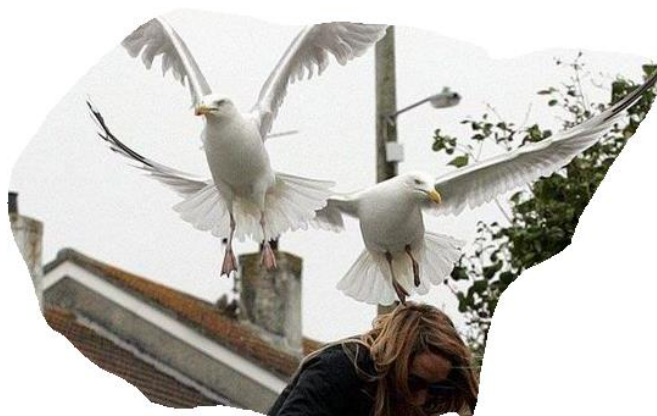
Who really think this is alright?



Elderly English lady struck by gull outside her garden gate.



Herring gull in feeding frenzy – this is similar to what happens in our school yards if the children are allowed out with their break food, and that is why the children are kept in until they have eaten their food. Parents have told us that their children (for years now) are pretending to have eaten their food in order to get out into the yard as soon as they can for break times. The situation was described clearly to DCHaG by a School Principal in 2016, and the fact that it is happening in all of our Primary schools, and getting worse was also notified to DCHaG.



10.

photographs and media articles
the truth about what gulls are naturally capable of



These are Herring gulls – readers are asked to equate the above image to the photograph on page 2, and then consider when the fouling is on a decking or patio or a barbeque area, or a children’s garden play house, or on the slides and swings in a playground, or at a school, or supermarket, or restaurant, and then imagine the fouling for seven months on and around the residential houses in case studies 1 and 2 above.

From: Gerry Leckey - (DAHG) [<mailto:Gerry.Leckey@ahg.gov.ie>]
Sent: 01 July 2016 17:48
To: Tom Cardiff
Subject: Seagulls in Balbriggan

Dear Mr Cardiff,

I refer to your previous correspondence and to our telephone conversation in relation to gulls in Balbriggan.

As you are aware birds are protected under the EU Birds Directive (2009/147/EC). Article 1 of the Directive establishes its wide scope of application, as follows:

1. *This Directive relates to the conservation of **all species of naturally occurring birds in the wild** state in the European territory of the Member States to which the Treaty applies. It covers the protection, management and control of these species and lays down rules for their exploitation.*
2. *It shall apply to **birds, their eggs, nests and habitats.***

As such herring gulls enjoy protection under this legislation. The population of herring gulls has greatly declined in Ireland (by about 90%) over the past 40 years, probably due to improvements in managing landfill sites as well as other factors. Nonetheless there are substantial numbers in some coastal towns and cities, including north Dublin city and county. Herring gulls can be a nuisance because of noise, mainly in July and early August, and may steal food from people eating outdoors. In the latter case, the easy availability of food sources from litter or feeding by people may be contributing factors to the bird behaviour of concern.

Article 5 sets out the fundamental protective provisions to be afforded to these (Article 1) birds, by prohibiting:

- (a) ***deliberate killing or capture by any method;***
- (b) ***deliberate destruction of, or damage to, their nests and eggs or removal of their nests;***
- (c) *taking their eggs in the wild and keeping these eggs even if empty;*
- (d) ***deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive;***
- (e) *keeping birds of species the hunting and capture of which is prohibited.*

Ireland, like all EU Member States, is bound by the requirements of the Birds Directive. As you raise in your correspondence Article 9 deals with the circumstances under which derogations from Article 5-8 might be allowed:

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.*

Applications for derogation licences are considered on a case by case basis. As I understand it, the Department has not received an application for such a licence nor has it received any definitive proposal in relation to the control of birds in the context of your correspondence. The primary role of the National Parks and Wildlife Service (NPWS) of this Department is the implementation of EU law in Ireland in respect of nature conservation. NPWS does not undertake control programmes, such as culls for example, in relation to bird species protected under the Directive. The Department will consider any application for such a licence, having regard to the provisions of the relevant legislation.

Before a derogation licence can be issued Article 9 provides a number of tests that are required to be met. The first test in Article 9 is clear in its wording in relation to “*where there is no other satisfactory solution*”. This is a prerequisite in considering any of the potential derogation provisions. The Court of Justice of the European Union (CJEU) has made this very clear also in *LRBPO and AVES v Région Wallone (C-10/96)* when it stated at paragraph 17; “[t]hat said, it must, however, be pointed out that a derogation from the system of protection established by the Directive and, in particular, from the prohibition of killing or capturing protected species, as laid down in Article 5(a), can be accorded only if there is no other satisfactory solution.” As such, in relation to an application for a derogation licence an applicant would need to demonstrate that there is no other satisfactory solution.

In regard to the second test, following our previous discussions it is assumed that you may be interested in pursuing an application for a derogation on the grounds of “public health”. Generally, it is understood that “public health” typically refers to the population as a whole, for example the World Health Organisation describes public health as: “*Public health refers to all organized measures (whether public or private) to prevent disease, promote health, and prolong life among the population as a whole*” and the Oxford Dictionaries defines it as “*The health of the population as a whole, especially as monitored, regulated, and promoted by the state*”. The European Commission has produced a Guidance document – “Guide to Sustainable Hunting under the Birds Directive”- in relation to the Birds Directive. While the Guidance is very useful in an overall sense it is somewhat limited in respect of the derogations in Article 9.

However, the Commission Guidance (section 3.5.5, p.55) outlines “*Public health and safety may be locally affected where the presence or the feeding of birds causes a demonstrable risk to human health or increases risk of accidents. In many cases habitat alterations or exclusion of birds will be appropriate solutions. For example, at many airports, management measures are taken to prevent bird strikes with aeroplanes.*” The Guidance (section 3.5.6) goes on to reiterate that other (non-fatal) measures must first be explored: “*Such solutions involve in particular habitat management (to reduce the attractiveness to birds and in particular flocks of birds) and various scaring techniques including sometimes shooting. In most cases other satisfactory solutions are available which are more effective and durable than hunting, with the exception of falconry. Therefore under Article 9 these must be used instead.*”

As such in terms of an application for a licence or a project proposal the applicant would be required to demonstrate that a demonstrable risk to public health tied to a specific problem exists. As you will appreciate, the Department is not a competent authority in relation matters of public health. However, I note that you have contacted the Health Protection Surveillance Centre (HPSC) in regards to this matter. It is not clear if the HPSC has provided a definitive conclusion in this regard. The Department intends to raise the question generally with the HPSC in the coming week.

In conclusion, the Department will consider any application for derogation but can only do so in compliance with European law. NPWS of the Department does not undertake control programmes, and perhaps this is a matter best raised at a local level in the first instance with relevant local authorities, and I note your correspondence with Fingal County Council in this regard.

Finally, you requested contact information for relevant officials in the European Commission. DG Environment is the relevant Directorate for the nature conservation Directives. It can be contacted by post at: European Commission, Directorate-General for Environment, 1049 Brussels, Belgium or by online submission at http://ec.europa.eu/environment/contact/form_en.htm - please note that if contact the Commission via the online submission form, you should choose the "Nature and biodiversity" theme from the relevant drop down box to ensure a correct referral.

I regret the delay in replying, but there was a considerable volume of text and issues to consider and consultation with other colleagues in the Department.

Yours sincerely

Gerry Leckey
Assistant Principal
Wildlife Licensing Unit
National Parks and Wildlife Service
Department of Arts, Heritage and the Gaeltacht
7 Ely Place
Dublin D02TW98

From: Tom Cardiff [REDACTED]
Sent: 21 September 2016 15:04
To: secretary_general@ahg.gov.ie; Niall Ó Donnchú (Niall.ODonnchu@ahg.gov.ie); gerry.Leckey@ahg.gov.ie; Niall Harmey - (DAHG) (Niall.Harmey@ahg.gov.ie); Wildlife Licence (wildlifelicence@ahg.gov.ie)
Cc: Gilbert Power (Gilbert.Power@fingal.ie); George Sharpson (George.Sharpson@fingal.ie)
Subject: Preliminary response to your letter dated 15th September - scanned and attached here for convenience

Dear Mr. O Donnchú,

Thank you for your letter dated 15th September last, received by us on 19th September – scanned and attached as 3 PDF pages for convenience.

As with all of our correspondence on this issue we have cross-copied NPWS and FCC per above cc list as there are relevant references to each Authority in all of our correspondence. We are also sharing this correspondence with our TDs and our campaign supporters across Balbriggan and Districts.

We will provide a full response when our committee has had time to consider all of the detail of your letter. As NPWS preferred to revert to paper for your reply, it will take us a number of days to share your scanned reply letter above with our committee and supporters and thereafter to process it fully.

However, there are aspects of your letter that we assess need an immediate response given that we are proceeding with a number of strands of our campaign, including the political one as the recess comes to an end.

Frankly, each one of the following points is of very serious concern to us for reasons that should hopefully be apparent when you read them – but perhaps best summarised by us saying that just as with Mr. Leckey’s first reply on 1/July/2016 to the campaign we started on 19th May last, your (2nd) attached reply also seems to seek to minimise, diminish and/or ignore the scale, nature and seriousness of the problems being suffered by our community and not just “your (my) estate” as you state in your letter. Our campaign correspondence to you and FCC relates to our community, i.e. several estates, schools, clubs and businesses – we do not understand why you refer to “concerns of the residents of your (my) estate” – our petition campaign has covered *eight estates* so far and this was notified to NPWS a number of times in previous correspondence.

- In Mr. Lecky’s reply to us of 1st July 2016, six weeks after our first correspondence, he prefaced virtually all of his ‘we only enforce the Legislation response’ with the sentence:

“Ireland, like all EU Member States, is bound by the requirements of the Birds Directive.”

We have provided live, documentary evidence to NPWS (and FCC) that Northern Ireland, Scotland, England, and Wales all have the pertinent gull species listed on General Licences

that are specifically for Public Health and Safety reasons, and as such consistent with the EU Legislation and the pertinent Derogation clauses; each of the four UK Countries and France and The Netherlands are actively controlling the pertinent gull species in their urban areas – including nest destruction and egg removal or sterilisation – systematically and expressly for Public Health and Safety reasons.

Mr. Leckey seemed happy to just quote that “Ireland like all member states is bound by the Birds Directive”, and it seems to us that he must have been unaware of what is happening in the other states (would those National gull control policies activities not come up in the ORNIS meetings? We have sent requests for information enquiries off to the EU), but your more recent reply ignores the public domain fact that we have notified to NPWS with irrefutable evidence that in effect *Ireland is the only EU country in our region that is not controlling the species in urban areas as a matter of policy for Public health and safety reasons*. And our community, and other communities are suffering intolerable living conditions and unacceptable health and safety risks because of our National policy being so far behind the realities of our situation.

- As notified to NPWS repeatedly in several pieces of our previous correspondence – our campaign covers Balbriggan and Districts (and not just “your (my) estate”), i.e. several (eight canvassed so far) major Housing Estates, businesses, clubs and Schools; we have provided you with mapped information of the scale and breadth of our campaign in and around Balbriggan (re-attached above), a copy of the petition document that we put to all of the estates, and photographed evidence of that *petition/declaration signed by 500+ people throughout our town and districts; we invited your Ranger to follow through with his original offer to come and meet us (so far declined by NPWS) to see this evidence for himself, and to hear the testimonials; we asked NPWS do you require paper copies of this material and said we will send them to you if required, and we have asked NPWS three time now whether or not you accept our bona fides in these regards – as yet unanswered*; we have eschewed asking all of our estates and supporters to write individually to you, as this could be perceived as spamming, and would be facile anyway; however, if you do not trust and accept our bona fides, and you don’t want to go through with your offer to meet us, then we can arrange a very high volume of correspondence if necessary.

In case you have not seen it, we have re-attached our most recent email (originally sent to you 12/August/16) showing the scale and breadth of our campaign in Balbriggan; “my estate” is just one of eight estates (approx. 600 houses) identified as problem areas – there are many more estates, that we have not canvassed yet, with the same issues; if you have in fact seen and read all of our correspondence (or if you need us to catalogue it all back to 19th May and re-send it to you just let us know and we will do that for you), can you please clarify to us why you only refer to “your (my) estate” in your recent letter – because you seem to be reducing the scope to suggest a localised Section 42 scenario – something that would completely underestimate the scale of the problems in our town and district?

- We know first-hand that NPWS has received direct, personal correspondence from a number of Businesses (loss/damage/health and safety), and from a School in Skerries (600+ children kept in from the yard during food breaks for child safety reasons) and some personal letters; we expect that we will have more schools writing to you shortly to inform you of their identical policy to the Skerries school – i.e. keeping all of the children in from the yards for their food breaks because of serious injury fears due to aggressive foraging by very large numbers of gulls; to date, we believe NPWS has not replied to any of these letters from our campaign supporters; and your reply to us also steers clear of all of this material; As a

summary for you, in case you have not seen the letter correspondence (all sent to Mr. Leckey):

- A Pub/Restaurant - serious damage and loss to business; food and injury health and safety issues for customers and staff; closed down Al Fresco dining area because of gulls.
- Motor Car Garage - roof damage and flooding of his business;
- School in Skerries - serious health and safety threat to the children; ,loss of fresh air yard time, and major damage to prefab
- Private Individuals - impact of gull attacks on their daughter
- Dry Cleaners - similar, plus comments regarding Skerries
- Convenience Store - similar, plus a witnessed aggressive foraging attack on a child

Do you want/need us to continue providing examples? Does NPWS intend to reply to these letters at some stage? Do you expect us to regard your recent reply to us as comprehensive for our community? It certainly does not read that way to us as you only refer to “my estate” in relation to a putative, very localised Section 42 scenario.

We have other written, witnessed (by a parent of one child) correspondence regarding the removal of a number of near-fledgling gull chicks from the playground in Westbrook (another estate) in early July by the DSPCA because the chicks parents were attacking upwards of twenty very young children playing on the green, some of whom ran out onto the road in terror as they were continually swooped in a concerted way by several gulls; it was only a matter of good fortune that, in this case, there was no traffic passing; this entire incident was reported to us by the mother of one of the children who ran out onto the road; the business man prosecuted by NPWS in 2013 (case report Irish Ind.) for removing a gull’s nest from the grill of the heat-exchanger for his refrigeration system in his shop is interested in this case. We see this as a sensitive case, and have withheld it from the public domain. However, we also see it as a case where a trusted Animal Welfare Institution made a correct judgement call putting the safety of our children first; on that particular road in question in Westbrook, there were five gulls nests in a row, with a total of 10 chicks around the same stage of development; four of the gull pairs pushed their chicks down onto the green more or less at the same time to start teaching them to fly; we have a similar story repeated several times throughout the estates; the people have said “we might as well be living in a bird sanctuary”.

In your letter, you refer to “*me being concerned about the activity of gulls in my estate*”, and the issues “*tend to peak in the summer months*”; we have to wonder if you really believe that your minimised categorisations of our gull issues even comes close to describing or recognising the realities across all of our main estates; again, our committee is acting for our community, we have representatives working in each of our main estates – they all report the same serious issues; very extensive faecal contamination all around our houses, on our children’s play areas and toys, constant aggression from the gulls, and very large numbers of gulls screeching , foraging and fighting for 24/7 for seven months - is very different from “their nuisance factor tends to peak during the summer months”; and then there is the impact on schools, clubs and businesses.

- We have opened direct discussions with several groups in Skerries now and they all confirm identical gull issues (nature of the problems and scale) in their community, for

residential areas, businesses, schools and clubs; one of our TDs lives in Skerries – Louise O’ Reilly; we have met Louise, she is very well aware of the problems, and has offered to help our campaign;

- Our clear, determined focus is on Health and Safety and the prevention of Disease in our community, with professional validation (WHO Europe, Public Health Impact, Urban Pest species, 2008), as evidenced locally by our many testimonies, and as evidenced and notified to NPWS re EU/International policies and actions in all of our neighbouring EU countries.

The direct relevance and the weight of all of that material seems to be ignored in both your reply, and Mr. Leckey’s earlier reply;

- Our gull numbers and issues are such that that the proofing spikes and nets you refer to in your letter are utterly futile (acknowledged to us by your Ranger – they break the spikes and build on and around them – exactly as witnessed by residents who tried them), and as already explained in our previous correspondence ; supplied evidence of common practice in our EU neighbouring countries shows persistent, repetitive nest destruction and egg removal/sterilization as the prevalent measure; we have highlighted that right now there are 4 generations of young gulls (2013, 2014, 2015, 2016) all in the air so to speak and that the problems we already have are abhorrent and intolerable – so a future Review in 2018 (adding at least two more generations before any action) , while very welcome and essential in our view, offers absolutely nothing to alleviate the situation we have been living with since 2013 (Balleally closure);

- The standard conservation PR comments trotted out over and over – repeated in your letter, and also in a brief reply we have received from Birdwatch Ireland that we will get back to at a later date - about “numbers are down 90%” and “feeding by people” are arrant nonsense in our view:

- numbers may very well be way down in the original seaward habitat of the species; is the implied logic of the continuing policy that we must concede our housing estates as habitat,

- and sacrifice our living conditions and health and safety standards for some putative future rehabilitation of what we view as a new species of *town* gulls to relocate them back to a restored,

- restocked seaward habitat? Your Ranger told us that you wouldn’t want that anyway because the gulls would predate the recovering Tern species. Or is it not just the case that we have arrived at this situation because of an over-long, unmonitored or inadequately monitored, blanket protection policy, a sudden dramatic change in the food supply, smart evolutionary behaviour by the species, and to date, no significant resistance from humans because of NPWS policy?

- our estates have heavy, lidded bins; there is very limited ‘feeding’ of gulls by a very small number of people; do you expect us to ‘police’ this practice and force people to stop? should we picket the homes of the feeders? Are the vast majority of people who are conscientious about food waste management to be ‘punished’ for the misguided kindness of a few people? Gulls range up to forty miles when foraging, do you expect us to marshal food opportunities on that geographic scale? In every one of the EU countries that we have researched, the competent authorities are executing multiple, concerted

strategies to marshal the food opportunities for urban gulls, including underground binning, byelaws and stiff fines for feeding, persistent publicity campaigns – and concerted control measures to reduce gull numbers and push the gulls away from urban centres ; as you know, FCC continue to hold their opening position since May 2016 i.e. that they have “no role in this issue”;

- proofing spikes and nets don't work either don or just move the problem – a universal description of the reality everywhere that we have researched; such measures might have had a role years ago when we were dealing an occasional few pairs of “nuisance gulls” here and there around the place; we are dealing with established large colonies that are actually competing for nest sites; we have seen roads in our estates with seven nests in a row, on one side of a street – do you want us to put up spikes and nets to move these to the other side of the street next March?; we have seen clusters with every house in cul-de-sacs nested by gulls; we know from the ornithologists that gull pairs exhibit 90%+ nest loyalty, and pubescent gulls return to near where they were hatched in or to breed; many mothers came out to our petition carriers in tears **throughout our estates** (not just in my estate) to say that it is just totally wrong that their children cannot play safely in their own gardens throughout the entire summer, every year;

Your reply, and Mr Lecky's before it either completely ignores or seeks to seriously diminish all of these previously notified facts – referring merely to “my concern about the activity of gulls in my estate”..

- Considering the points above, the scope and scale of the problems we have in our Town and Districts would seem to us to completely obviate the traditional Section 42 as any kind of viable solution; Your Minister quoted the Section 42 Permit to Clare Daly in her reply to Clare's first Dáil Question in early July; your Minister then seemed to clearly *park* Section 42 in her second reply (Questions 171 & 172) 13/7/2016, in which she also alluded to the possibility of a Licence Application from the Local Authority – an aspect of your Minister's 2nd reply was a very considerable surprise to us, because we know that we had already provided NPWS with official email copy correspondence from FCC in which they made their position abundantly clear viz – “no role for FCC in this issue, it is a matter for National Policy bodies (DAHG/NPWS) , and FCC will review its position if/when new policy relevant to FCC emerges”; as you acknowledge in your letter, you know that we have met FCC and we can tell you that their position is fundamentally unchanged – presumably that is also clear to NPWS from your contact with FCC? In case it is not clear, Mr Power further clarified FCC's written position as stated in May 2016 at our meeting with him on 31st August “FCC has no intention whatsoever of applying for any Licence”;

And so your letter seems to be looking to re-activate Section 42 as an option for “ my estate” – presumably you have understood from our repeated statements above and the resupplied evidence above, that **we are acting for our community?** Do you expect all of our estates to form ‘organisations’ to apply for Section 42 permits? Do you expect us to form an umbrella organisation to apply for a single permit for Balbriggan and Districts? Skerries and Howth will most likely apply for one as well if NPWS issue one to us.

We quote the following excerpt from the attached media article based on an FOI request to DAHG in July last – **i.e. more than two months after you started receiving our campaign correspondence:**

The National Parks and Wildlife Services. meanwhile were granted permission

to remove eggs and destroy nests at Wexford Harbour near a colony of little tern, as the larger gulls eat their eggs and chicks.

A spokeswoman for the Department told us: “Although they can at times be a nuisance, seagulls are nonetheless a protected species.

“Numbers have declined in recent years and the Department does not have any plans to reduce the population.”

She said the closure of municipal dumps around the country means an increasing shift in the remaining gull population towards rooftop nesting in towns.

We want to destroy nests on our roofs promptly as they are attempted by the gulls and, if necessary, to remove eggs, in so doing to protect the health and safety of our families, from faecal contamination, disease risks, aggressive attack, and protracted sleep deprivation (just like all of our European neighbours are doing under the same laws as us), in particular we want to protect our young children, our elderly, our frail, and our immunocompromised – are we less important than the gulls and the little terns?; your spokeswoman acknowledges “the closure of dumps is causing a shift towards rooftop nesting in towns”, and also makes it clear that the Department does not have any plans to reduce the population”. It seems perfectly clear from the above quoted NPWS statement that both gulls and little terns are more important to NPWS than people. We are very confident that all other communities affected by these problems (somewhat acknowledged in your reply) will want to do the same as us. Are you seriously proposing Section 42 permits as the mechanism for this?

If NPWS are considering some kind of ‘interpretational’ flexibility and pragmatism in regard to section 42, pending a full forum in 2018 – then there may be some promise in that possibility. However, we firmly believe that any Licence (of any variation) relating to the issues in our Town and District would be clearly based on public health and safety reasons given all of the evidence and precedents in our EU Neighbouring countries, and in your Minister’s reply to Clare Daly she said “my department is not a competent authority on matters of public health and safety” – so how could that work? Also, presumably any Licence would have to cover our town and districts, i.e. our community - are you suggesting that we would need to form an ‘umbrella organisation’ for that purpose? Can you suggest how a Section 42 permit might alleviate the problem of ‘masses’ of gulls surrounding a school-yard for aggressive foraging as notified to you by the Principal of the Skerries School, and as we know is also the case in a number of our other schools? Would you be thinking of placing a net over the entire yard of each of our schools – or does NPWS actually hold the view that it is acceptable that thousands of children lose have of their fresh-air time because of a risk of injury from seagulls?

- FCC have made it very clear time and time again in writing, as copied by us to NPWS that they see no role in this for them and have no intention of applying for any Licence; the only space they have left for involvement on their part is if/when there is a change at National Policy Level – by which we know from other correspondence to private campaign supporters they mean a policy change by NPWS – and even then, they have only committed to reconsidering their position

All of the above said, and particularly if/when NPWS acknowledges with no ambiguity the points above, we do see some encouraging content in your response, all of which we will consider in detail in the coming week; but we do believe that any genuine options for progress towards a solution must address the above issues at community level, in each setting and location affected by these issues. We have told NPWS a few times that we are not out for mischief, we have striven to be responsible in our campaign; we have delayed a media phase and allowed time for reflection and some pragmatic honesty about the situation; we are now availing reasonably discreetly of our political system; and we have made it as clear as we can that we will proceed to a concerted media phase if that proves to be necessary. We really would wish that senior, experienced people in trusted public roles fully grasp that we are acting justifiably and responsibly for the health and safety of our families and our community. The long-standing protection policy, dramatically changed food supply circumstances (Balleally), and the evolving behaviour of this impressive, adaptive species have combined to create intolerable conditions and unacceptable levels of risk.

In the Minister's 2nd reply to Clare Daly and in your letter, there are references to a 'proposal' and you also mention not having received "any submissions from (us) yourselves or others requesting the addition of the Herring Gull to the Declaration" during your Annual Review Process. We started our campaign in May of this year; prior to that as ordinary civilians, none of us had any knowledge of the workings of NPWS, Wildlife Legislation, Derogations, Regulations, Declarations or Licences. It is now late September and we have learned a lot. We will assemble a proposal and submit it to you in the coming weeks; our proposal will not be able to address logistics, costs, funding, insurances, complex circumstances, access, disputes, control, monitoring, reporting, humane safeguards, standards or operational responsibilities; it will not be able to address measuring of successes, failures and outcomes – all of these could realistically only be addressed by the competent authorities that we asked to engage with this issue on 19th May. Our proposal will address a series of straightforward steps that enables our community to begin reversing the worst of the negative impacts of the gull species having been allowed to reach pest status in our urban areas.

There are other detailed points in your letter that we will revert on after consultation with our campaign supporters, and we will share our succinct (eventual) reply from Birdwatch Ireland. And as mentioned, we will make a 'proposal' in light of your comments about licences and the Declaration.

In a separate email issuing from us shortly you will see a summation of the EU countries comparisons, and in particular, a ruling from the Dutch High Court on 17th August 2016 in favour of three Municipalities of Amsterdam - overturning an earlier District Court decision in favour of the Wildlife Organisation Foundation Fauna Protection. The Municipalities have successfully invoked the "Research" aspect of the EU Law, pertinent to the "exploitation and management of the species", and using all permitted control measures in the Derogation – to run a programme for three years throughout which they will log, measure and assess the effectiveness of all deployed measures and then proceed to use those that are most effective for ongoing control of gulls in their urban areas for the protection of public health and safety. We believe ours is a reasonably accurate paraphrasing of this Dutch judgement. The Municipalities plan to resume their programme in February 2017. Perhaps NPWS and FCC would consider partnering and emulating the Dutch model in Balbriggan and its Districts, starting in February 2017 (the same time to which Leiden, Aalborg and Haarlem are

committed?) as a proactive research programme to feed into the General review you have flagged for 2018?

In conclusion, your letter was addressed to me, and primarily set up references to my estate. I am writing in the capacity of Secretary to our campaign committee listed below, we have ten additional people working with us around our estates and if you require it, we can get each of these people to sign and witness a declaration as to all of the problems and gull issues in our community. It would be welcome if NPWS would acknowledge each of these facts and keep any future correspondence on that footing. If you are not able or willing to do that, please let us know your reason(s) and what additional information and/or evidence that you require to enable you to recognise that as the position.

Your sincerely

[Redacted signature line]

[Redacted address block]

Irish Media reports on gull issues:

Irish Sun.ie, July 2016

SEAGULLS are attacking hospital patients, threatening workers on rooftops and interfering with the drinking water supply, according to Government reports.

And now a Freedom of Information response to the Irish Sun gives an insight into the growing problem.

We reveal today that permission was granted 11 times in 2014 and 2015 to allow “control measures” be carried out — including destroying eggs and nests despite the seagull being a protect species.

The Department of Arts, Heritage and Gaeltacht Affairs gave the green light to get rid of eggs and nests at Our Lady of Lourdes Hospital in Drogheda, Co Louth.

This was because gulls were “causing disturbance to staff and patients” who were “being attacked by nesting pairs”.

The birds were also “soiling sensitive areas causing health and safety issues”. Herring gull nests were removed last year from the Eircom HQ in Dublin’s Heuston South Quarter due to “damage to panes of roof glass” as well as the “threat to staff members working on roof of building” causing a health and safety issue.

Dublin City Council used a falcon to scare away gulls three times from the Ballyboden and Stillorgan Reservoirs, which provide clean drinking water for Dublin, as they were “swimming and excreting” into open storage areas.

The National Parks and Wildlife Services. meanwhile were granted permission to remove eggs and destroy nests at Wexford Harbour near a colony of little tern, as the larger gulls eat their eggs and chicks.

A spokeswoman for the Department told us: “Although they can at times be a nuisance, seagulls are nonetheless a protected species.

“Numbers have declined in recent years and the Department does not have any plans to reduce the population.”

She said the closure of municipal dumps around the country means an increasing shift in the remaining gull population towards rooftop nesting in towns.

listed bird species in certain situations. In the main, these Declarations are used by landowners to protect livestock and crops and to protect ground nesting birds.

In recent years we have reviewed these Declarations annually before their renewal on 1 April each year but we have not received any submissions from yourselves or others requesting the addition of the herring gull to the Declaration. A major review of the derogations is scheduled for 2018, and this will take account of all relevant factors, including perceived threats, distribution and population data available on the bird species in the derogations. The review will include a public/stakeholder consultation element. In the meantime, species can be added to or dropped from the derogations list depending on new information available at the time of making annual derogations.

It would appear that you are looking for a solution that would involve non-lethal methods perhaps such as removing nests and eggs and possibly the installation of netting and other mitigation measures and indeed this would seem to be the most sensible option to consider especially in an urban setting. There is a facility under section 42 of the Wildlife Acts for a person to obtain a permit, to take certain actions, including the scaring, capturing or killing of birds where they are causing serious damage to buildings and other structures, food (including human food products), agricultural crops, forestry plantations, other fauna, etc. While, as indicated above, the Department does not have a role in relation to culling wildbirds, the Department would be willing to consider on its merits any applications under Section 42 for licences relating to removing nests and eggs of seagulls. The Department has for example granted licences to Dublin City Council in recent times to use tactics to scare seagulls from their reservoirs. The Department has also issued licenses to other organisations for the removal of seagull nests and eggs – last year, for example, a license was granted to Our Lady of Lourdes Hospital in Drogheda, Co Louth for the removal of nests/eggs of various seagull species including Herring Gulls.

I understand that you are liaising with Fingal County Council and indeed met with them recently and I gather that they have suggested engaging with other bodies such as Birdwatch Ireland with regard to the carrying out of a survey in order to assist in addressing the question of seagulls in your estate.

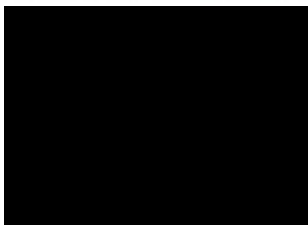
I hope the foregoing is of use to you and should you have further comments or have a particular proposal in relation to action which yourselves, the local authority or other body wish to pursue where this Department has statutory powers of licensing or



An Roinn Ealaíon, Oidhreachta,
Gnóthaí Réigiúnacha, Tuaithe agus Gaeltachta

Department of Arts, Heritage,
Regional, Rural and Gaeltacht Affairs

Mr. Tom Cardiff



15 September 2016

Dear Mr Cardiff

I refer to previous correspondence to the Department in recent months in relation to the seagull problem in your estate in Balbriggan.

From reading your correspondence, I can understand the anxiety and concern of the residents of your estate at the activity of the seagulls. I know that there is evidence of an increase in recent years in the numbers of seagulls in some coastal towns such as Balbriggan and Skerries and their nuisance factor tends to peak during the summer months. You rightly state that similar problems have arisen in coastal towns in Britain.

The primary role of the National Parks and Wildlife Service (NPWS) of this Department is the conservation of habitats and species and the implementation of national and EU law in Ireland in respect of nature conservation. We do not have the statutory functions to undertake control programmes, such as culls for example, in relation to bird species protected under the Directive.

I am aware that my colleague, Gerry Leckey, did respond to you on 1 July last setting out the legal position relating to our obligations under the European Birds Directive and indeed Gerry has been in discussion with you over the phone. You mentioned the Declaration made by the Minister under the European Communities (Wildlife Act, 1976) (Amendment) Regulations 1986 which allows the capturing and killing of some

otherwise, the Department will be pleased to examine these promptly. In that regard you may wish to contact Mr Leckey who heads up the Wildlife Licensing Unit. In Gerry's absence until 10 October, you can contact Mr Garry Byrne in the Licensing unit who I understand you have already been speaking with.

Yours sincerely



■ Niall O'Donnchú
Assistant Secretary

From: Tom Cardiff [REDACTED]

From: The Balbriggan Community Committee (BCC) on urban seagull issues

To: Whom it Concerns at the Department of Housing, Local Government and Heritage - National Parks and Wildlife Service:

This is the third email in a sequence of three emails that comprise our Submission to the Public Consultation process (PCP) on Wild Birds Derogations for 2021.22.

We request a confirmation copied to each of our members cc'd above that you have received our submission.

The full composition of our submission is as follows:

Email 1 of 3: was sent to Dept./NPWS at 15:11 on 20th Jan 2021 and contains a single document in PDF format as the main body of our submission.

Email 2 of 3: was sent to Dept./NPWS at 15:18 on 20th Jan 2021 and Contains attachments below as follows:

1. BCC Minority Report to the Consultative Committee (CC) established to examine impacts of urban seagull colonies on communities and make recommendations. BCC has two seats on the CC and we submitted this Minority Report to the Minister and the Dept./NPWS on 20th April 2020.
2. The First Interim Report of the CC to the Minister/Dept./NPWS made on 17th April 2020
3. Email sequence between BCC and the Dept./NPWS (4 message) concerning this PCP dated 21 Dec 20, 22 Dec 20, 30 Dec 20, and 7 Jan 2021
4. Email sequence between BCC and the Dept./NPWS and second former CC chair (4 messages) dated 2 Nov 20, 3 Nov 20, 16 Dec 20, 18 Jan 21
5. Legal Opinion (PDF Document) given to the Dept. on 11th August 2020 and then to the CC on 1 Sept 2020 (note evidence provided to the Barrister by BCC for consideration in his opinion is attached in email 3 of this submission sequence)
6. Roughan and O'Donovan Camera Drone study (2018) of nesting seagulls in parts of Balbriggan, Skerries and Howth - commissioned by Fingal County Council
7. BCC Community Report (PDF) December 2017 to Minister and Dept./NPWS - on use of the Balbriggan Derogation in 2017 and several other pertinent matters
8. Correspondence Dec 2016 et seq between the Dept/NPWS and the HSE on urban seagulls and public health and safety
9. Correspondence September 2016 between BCC and the Dept./NPWS on urban seagull issues
10. Email 1st July 2016 from Dept./NPWS claiming to set out the legal position on urban seagull issues and compliance with the Birds directive.

Email 3 of 3: i.e this email - Contains 2 attachments as follows, and each of which themselves contain several attachments:

- 1 Emailed attachments (evidence and questions) 12th July 2020 via the first former CC Chair to be provided to the Barrister hired by the Dept./NPWS to give legal opinion to the Dept./CC on urban seagull issues**
- 2 Email (further evidence and questions) July 2020 via the first former CC Chair to be provided to the Barrister hired by the Dept./NPWS to give legal opinion to the Dept./CC on urban seagull issues.**

In conclusion therefore, our full submission with attachments as listed above, is submitted in a set of 3 covering emails for the consideration of the Dept./NPWS towards the decisions to be taken for the 2021 Derogations Declarations in relation to the protection of public health and safety State-wide.

The Balbriggan Community Committee (BCC) on urban seagull issues
as cc'd above

all names and postal addresses were previously provided - if required again for this process
please send us a request by email and we will comply

Dear Derek,

The following 3 attachments were included on your "Noise - questions for the legal module" on 16th last along with the main Word document containing the actual questions.

These three items are referred to as evidential items in the main Questions document titled "Noise - including legal questions."

MEP Clare Daly's letter includes links to the EU and WHO latest materials on environmental noise and public health.

The Herring Gull recording is provided in case the Barrister decides to take the ring-tone alarm challenge

The Abstract from Professor Moyna's RTE programme about sleep and the health impacts of sleep disturbance on health and human performance is highly pertinent.

We meant to include these 3 items on our email to you last evening for your convenience and we request that you include them in our material to the Barrister.

Noise pollution

Request number:	102470
Requested by:	Daly Clare
Requested for:	Daly Clare Office
Date of request:	22 August 2019
Answered by:	HOPP Balazs

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[Personal Data Protection Notice](#)

Noise pollution

Dear Ms DALY,

The text below is in answer to your enquiry.

1. The main EU instrument to identify noise pollution levels and to trigger the necessary action both at Member State and at EU level is [Directive 2002/49/EC](#) relating to the assessment and management of environmental noise. Environmental noise pollution relates to noise caused by road, rail and airport traffic, industry, construction, as well as some other outdoor activities. The Environmental Noise Directive (END) focuses on three action areas: the determination of exposure to environmental noise; ensuring that information on environmental noise and its effects is made available to the public; and preventing and reducing environmental noise where necessary and preserving environmental noise quality where it is good. The Directive applies to noise to which humans are exposed, particularly in built-up areas, in public parks or other quiet areas in an agglomeration, in quiet areas in open country, near schools, hospitals and other noise-sensitive buildings and areas. It does not apply to noise that is caused by the exposed person himself, noise from domestic activities, noise created by neighbours, noise at work places or noise inside means of transport or due to military activities in military areas. The Directive requires Member States to prepare and publish, every 5 years, noise maps and noise management action plans for:

- Agglomerations with more than 100,000 inhabitants
- Major roads (more than 3 million vehicles a year)
- Major railways (more than 30.000 trains a year)
- Major airports (more than 50.000 movements a year, including small aircrafts and helicopters)

When developing noise management action plans, Member States' authorities are required to consult the concerned public.

Country information is available in the EEA publication [Noise fact sheets 2018](#)

The Directive does not set limit or target values, nor does it prescribe the measures to be included in the action plans, thus leaving those issues at the discretion of the competent Member State authorities. END was [evaluated](#) in 2016.

2. Environmental noise is also regulated at EU level at the source of the noise, with legislation on issues such as harmonized noise limits for motor vehicles, outdoor

Noise pollution

equipment and other noise-generating products. The list below outlines key legislation (consolidated versions) in the field of noise at source.

- Motor Vehicles - [Regulation \(EU\) No 540/2014](#) of the European Parliament and of the Council of 16 April 2014 on the sound level of motor vehicles and of replacement silencing systems
- Motor Cycles - [Regulation \(EU\) No 168/2013](#) of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles
- Tyres for motor vehicles and their trailers and their fitting - [Regulation \(EC\) No 661/2009](#) of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor
- Limitation of the noise from aeroplanes - [Regulation \(EC\) No 216/2008](#); see also [Commission Regulation \(EU\) No 748/2012](#)
- Operating restrictions at Community airports - [Regulation \(EU\) No 598/2014](#)
- Regulation of chapter 3 civil subsonic aeroplanes - [Directive 2006/93/EC](#)
- Railway interoperability - [Directive 2008/57/EC](#)
- Technical Specification for Interoperability (TSI) on Noise - [Regulation \(EU\) No 1304/2014](#)
- Noise charging - [Commission Implementing Regulation \(EU\) 2015/429](#)
- Connecting Europe Facility - [Regulation \(EU\) 1316/2013](#)
- Noise emission in the environment by equipment for use outdoors - [Directive 2000/14/EC](#); see also the information provided on the [website of DG Growth](#). This Directive is [under revision](#)

3. The [WHO webpage](#) on noise in Europe

See also [Development of WHO Environmental noise guidelines for the European Region](#) and [Night noise guidelines for Europe](#)

An annual average night exposure not exceeding 40 decibel (dB) outdoor has been recommended in these Guidelines.

As well as the article: [Development of the WHO Environmental Noise Guidelines for the European Region: An Introduction](#), Dorota Jarosinska [et al.], in: *International Journal of Environmental Research and Public Health*, 15(4), 2018

4. Additional information:

[European Aviation Environmental Report](#) / EASA, 2019

This is a comprehensive report on the environmental performance of the European aviation sector. It also provides statistics in form of tables and charts.

Noise pollution

[Managing exposure to noise in Europe](#) / EEA, 2017, summary updated in 2019

This briefing presents updated estimates of the numbers of people exposed to environmental noise pollution in Europe. It also provides a new summary of the measures being used in Member States to manage noise.

[Noise country factsheets](#) / EEA, 2018

The Environmental Noise Directive (END) requires EU member states to assess exposure to noise from key transport and industrial sources with two initial reporting phases: 2007 and 2012. Where the recommended thresholds for day and night indicators are exceeded, action plans are to be implemented. These country fact sheets present data i.a. on air traffic noise and airports.

[A Spatial Data Infrastructure for Environmental Noise Data in Europe](#), in: International Journal of Environmental Research and Public Health, 14(7), July 2017

[Review of environmental noise policies and economics in 2014-2016](#): presentation, 12th [ICBEN](#) Congress on Noise as a Public Health Problem, 2017

[Noise Observation and Information Service for Europe](#) is maintained by the European Environment Agency (EEA) and the [European Topic Centre for Air Pollution and Climate Change Mitigation \(ETC-ACM\)](#) on behalf of the European Commission. It contains data related to strategic noise maps delivered in accordance with [European Directive 2002/49/EC](#) relating to the assessment and management of environmental noise. See also the article [EEA draws the first map of Europe's noise exposure](#) (last updated in March 2017)

We trust this will be useful, but please do not hesitate to contact us again if you need further information.

Yours sincerely,

Balazs HOPP

0032 2 28 44526

Hi Derek,

Thanks for acknowledgement. I am away very early tomorrow - hence the work done to complete this evening - and may be late home.

In case I'm really late:

Two of our documents comprise the question material

- Noise - including legal questions
- Balbriggan Community Committee questions for the legal module,

The other 7 comprise a selection within which evidence basis for most if not all of the questions is present.

Kind regards,

Tom

On Sun 12 Jul 2020, 23:12 Derek McLoughlin, <[REDACTED]> wrote:

Dear Tom,

Thanks for this.

I will circulate your questions to the CC and, of course, to Dr Browne.

I'd be very grateful if you could include a very brief list of bullet points or table with the name of each of your attachments and whether they relate to questions or information for him. For example, you have two documents with questions, one community report highlights gull issues in Balbriggan, etc. I hope to submit this to him on Tuesday morning.

Re target date, I haven't an exact date but I'd hope for the first week of August.

Kind regards,

Derek

On Sun, 12 Jul 2020 at 19:31, Tom Cardiff <[REDACTED]> wrote:

Dear Derek,

We have attached the documents that we would like to have sent to the Barrister for his consideration of legal contexts. But for CoViD-19 our recent material would have been formatted and edited a bit better - you might apologise for us to the Barrister.

Can you let us know the circulation list for our material please?

Also can you indicate the target date for a formal response from the Barrister?

We have provided a couple of extra documents for evidential contexts relative to the content of some of our questions. We could have provided a lot more evidential material, but we think what we have - as a collective - assembled gives a reasonable backdrop.

Kind regards,

Tom and Gerry
on behalf of BCC and our wider community committee