

National Parks and Wildlife Service (NPWS)
Department of Housing, Local Government and Heritage (DHLGH)
Public Consultation Process
Wild Birds Derogation Declarations 2020.21

Personal Submission (seven numbered pages)

I am a co-founder among a group of twelve people who in 2016 set up the Balbriggan Community Committee (BCC) on urban seagull issues in our town. I am also a serving member on the Consultative Committee (CC) to examine urban seagull impacts on communities and make recommendations. I making this personal submission based on my acquired knowledge on the subject and a very large amount of case studies brought to my attention as a member of both committees mentioned above.

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Balbriggan
Co. Dublin

1. Policy - Protection of citizens, public health and safety:

1.1

The stated purpose of and the legal basis for Annual State-wide Derogations Declarations is the protection of public health and safety. There is no higher priority function or duty of the State than the protection of its citizens from risk and/or harm. In this regard, DHLGH/NPWS retains the sole authority over and responsibility for policy and for implementation thereof - to be administered under the Wildlife Acts as governed by the EU Birds Directive.

IN making derogation decisions, the State continues to choose to deny **proactive** protection to communities impacted by high density urban seagull colonies and also continues to deny the 'public health' dimension of the seagull issue. In both such regards Ireland is a complete outlier in Northern Europe including NI/GB – despite the provisions of the Birds Directive for the protection of people. An examination of NPWS' handling of this issue since 2016, a reading of annual EU Derogation Reports, and/or a desk-top analysis of the policy, licencing and operating practices of all neighbouring jurisdictions including NI/GB will verify that the position above is truly described without exception.

The Dept./NPWS has previously acknowledged in PQ responses that its **reactive** case-by-case system takes 6-8 weeks per case and claimed that it does the best it can from available resources. Such a claim, in my view, portrays the Dept./NPWS as somewhat casually and unthinkingly misconstruing – in the urban seagull context - the overriding priority of public health and safety as a Government policy. The Dept./NPWS has also acknowledged in CC Terms of Reference and in CC meetings that the scale of the urban seagull issue is urban/state-wide and that case-by-case processing will never have adequate resources for the 6-8 week intervention window involved in seagull nesting/breeding. An unbridgeable resources gap is not a valid reason to subject communities to risk and harm when there are well-precedented legal remedies available.

Yet the Dept./NPWS continues to refuse to adopt a General Licence approach (e.g. like Northern Ireland where their legal threshold is identical to our Wildlife 2000 Act Section 59), or indeed even a proportionate version of such an approach that is focussed on core human habitat– refer to Section 6.

1.2

There has been ample evidence here for several years that action is needed to protect impacted communities, with extensive and direct comparisons of causes and circumstances in all neighbouring jurisdictions. NPWS issued a press release in July 2015 stating its awareness that seagull flocks were moving into towns and cities following closure of landfills and that it had no intention to control numbers. On 8th December 2016 in a meeting in Smithfield an NPWS official stated that “the other EU countries have been dealing with this issue for years”.

1.3

The Dept./NPWS adopted a policy position (PQ responses) in and since May 2016 that it is “not a competent authority in matters of public health and safety” – which seems to only apply in relation to urban seagull issues because this ‘position’ is contradicted by its 35 year history of derogating on public health and safety grounds for multiple wild birds species, and also (until 2019 apparently) by its history of case-by-case licencing, including for seagull issues, where presumably NPWS Rangers applied common sense and experience when making recommendations on public health.

The bottom line is that communities here that are seriously negatively impacted by urban seagull colonies are not being protected by the State within the available legal provisions. Ireland is a complete outlier in this respect.

The Dept./NPWS, therefore, has sole responsibility for the state of affairs vis a vis urban seagull colonies and negative impacts on communities.

2. The Law

2.1

The EU Birds and Habitats Directives comprise the pertinent law in Ireland. The 1986 Regulations are not compliant with the 1979 Birds Directive. The threshold being applied by NPWS to derogation decisions viz. **“represent a threat to public health and safety”** is materially higher than the legal threshold viz. **“in the interests of public health and safety”**. In exceeding the specified EU threshold Ireland is behaving illegally under EU law. The fact that the threshold is fundamentally germane to State-wide public health and safety makes this a very serious breach. The effect of the breach means Irish citizens are being exposed to serious public health and safety risks – and actual serious harm - by the State and are being discriminated against by the State compared to millions of other EU citizens and compared to GB/NI citizens.

2.2

There are strong indications that further serious anomalies exist in the way the law has been applied here over many years. The Wildlife 2000 Act (Amended) Section 59 clearly extinguishes the 1986 threshold in favour of derogation **“to preserve public health and safety”**, and also clearly enshrines the Minister’s authority to licence for this reason, the 1976 Act notwithstanding. This is a crystal clear provision in primary legislation which affirms the overriding priority of public health and safety. The 2011 Wildlife Regulations which, for the first time, put the correct threshold from Article 9.1.a) **“in the interests of public health and safety”** onto our Statute books – have not been implemented.

2.3

There are also very strong indications that Ireland remains non-compliant with a number of other aspects of the Birds and Habitats Directive e.g.

Hab. Art. 1: **“Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics .”**

Hab. Art. 4: **“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 .**

Birds Art. 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.**

The Habitats Directive emphasises ‘natural habitat’ and sets out detailed provisions for identification of habitat sites and registration with Natura 2000 as the means of conferring legal protection onto such sites.

Given the policy and operational precedents in all neighbouring jurisdictions, Brexit notwithstanding, there is clearly no requirement or justification for proliferation of high density urban seagull colonies on people's homes schools or hospitals (**social and public health and safety context**), or businesses (**economic context**). There is no such stated requirement in the Habitats Directive or in the Natura 2000 framework/Annexes.

In conclusion on this point, the 'law' unambiguously recognises and caters for the priority of human beings and the protection of their health, safety and property with proportionate provisions for conservation of bird species. In the view of the legal opinion provided to the CC in August 2020, Ireland has refused to apply this law properly since 1986 and to date.

Based on the evidence of serious and escalating impacts on communities impacted by urban seagull colonies, – such sustained and serious misapplication of the law – as set out in the expert opinion – has clearly been and continues to be to the detriment of **people** in communities in which high density seagull colonies have established, are freely proliferating and are causing major distress and harm. '**People**' means families in their homes – including infants, babies, young children, adults, elderly people, people with additional needs, immune-compromised people; **people** means our children, teachers and staff in our creches and schools, people in our hospitals means sick people and staff.

The Dept./NPWS has more than sufficient evidence of impacts on people. And it had this evidence before it kicked the issue two years down the road into the 2018 Derogations Review, and before it kicked it into the 2 year + CC.

3. Protection delayed is protection denied

3.1

The Balbriggan Derogation since 2017, while helpful in many situations, does not acknowledge the public health dimension of the issue – despite ample evidence and precedents. Perhaps this may be because of the apparently non EU compliant higher threshold being used in the “1986 Regulations” and impacted communities must hope that this will be rectified in the 2021.22 Derogation Declaration. 'Public health' issues require a higher standard of public administration response than 'public safety' and the pair combined are what are required – based on extensive evidence and precedent - to be acknowledged and acted upon for the range of urban seagull issues that are impacting communities.

3.2

The first call for help from Balbriggan was in May 2016. In September 2016 NPWS claimed that the 2018 5-yearly Review of the Derogations Process would “address all perceived threats”. It did not do so, rather it pushed the issue out to a Steering Group, that then became the Consultative Committee, which was to form and report in time to influence the 2019 Derogation Declarations (Minister to 5 TDs, meeting 17th October 2018). The CC did not form until June 2019, after the 2019 Derogation Declaration. The CC made material recommendations on public health and safety grounds in April 2020 which were not implemented. The 2021 Declaration itself was poorly implemented, three weeks late with no publicity.

3.3

This PCP was issued to run over Christmas/New year and was not advertised. The extension to the closing date was only granted after a complaint to the Secretary General, but it was still not advertised. The PCP notice omits 'public safety', but specifies 'public health' – thus contradicting the claimed (in)competencies of the Dept./NPWS/.

3.4

At no point since May 2016 has NPWS displayed any regard for the impacts of urban seagull colonies on communities, impacts which it knows have escalated now for five breeding seasons and heading into a sixth. Since July 2016 NPWS has claimed on the Dáil and Seanad records to be bound by and compliant with the Birds Directive in its policy. In August 2020, NPWS received expert legal opinion that it has not been and is not Directive compliant and that there are legal grounds for derogation in respect of seagull noise and of the Antimicrobial Resistance risk. The evidence for such conclusions has been in place for many years as have the precedents for protection of citizens in neighbouring jurisdictions

3.5

In conclusion on this point therefore, it is inarguable that protection delayed for no good reason – within the law provided - is clearly protection denied for no good reason. In the case of the urban seagull issue the necessary protections are being denied by the State – for no good reason.

4. Impacts on communities

4.1

How can the Dept./NPWS justify continued denial of protection over several years now against such (evidence proven) impacts as:

1. Sleep deprivation from 3am in the morning from April to September – medical evidence and legal basis for Derogation has been provided
2. Attack and injury requiring medical treatment and sometimes hospitalization – very many document cases and repeated warnings from D-DOC
3. Children confined in schools due to aggressive foraging from large numbers of seagulls – evidence provided by schools and parents
4. Antimicrobial Resistance risk from contaminated seagull faeces – scientific and medical evidence provided; abundance of caution required
5. Serious and recurring damage to property running to thousands of euro – very significant evidence provided
6. Huge expense on futile 'alternative' solutions – very strong evidence in the possession of the Dept./NPWS
7. Inability to safely maintain homes/business premises over a number of months – extensive testimony provided – including from case licences

all the while as unmanaged proliferation of high density seagull flocks continues in urban areas throughout the country? There is no justification when the law and common precedent and practice in every neighbouring jurisdiction are transparent, evidence-based and irrefutable.

5. Urban seagull ecology and research

- 5.1 There is ample research and expert opinion (as given to the CC in February 2020), and as reflected in other national policies in England and Holland, that urban seagull colonies do not revert to seaward habitat. Therefore, proliferation of urban colonies is not a means of repopulating seaward habitats. For this reason, urban colonies, if they are to be accommodated, need to be managed so as not to seriously impact on human communities, i.e. just like all other species that have been subject to controls in Derogation Declarations for 35 years in order to preserve public health and safety.
- 5.2 If ‘new’ research into Irish urban seagull behaviour is necessary, this should be funded and carried out in parallel with essential protection measures for impacted communities. Public health and safety is an overriding priority of Government and public administration policy. Such an approach is also well precedented across the UK and Northern Europe, with the 2020 Policy for England being a clear example whereby the protection of public health and safety and life is the overriding priority, class licences are issued to local authorities, and ongoing research into urban seagulls will be carried out in parallel with the policy.
- 5.3 Ideally, funding should be provided now for urban seagull research over the three seasons leading into the 5-yearly 2023 Derogations Review. However, protection of citizens and of the interests of public health and safety must no longer be delayed and/or conditional on research.

6. Proposals for the 2021.22 Derogation Declaration

6.1

A Derogation Declaration from 2021.22 onwards is needed as follows:

- 1 In the interests of public health and safety under Article 9.1.a) of the Birds Directive, the 2011 Wildlife regulations, and The Wildlife Act (Amended) Section 59 - people’s homes, creches, schools, colleges, hospitals and other medical facilities, and premises involved with the manufacture, storage, sale and or consumption of human food are not suitable for nesting/breeding of seagull species. It is permitted to remove the nests and eggs of seagull species xxxxxxxxxxxxxxxx.
- 2 For any premises other than those specified at 1 above, the property owner may apply to NPWS for a licence to deal with issues arising from urban seagulls.
- 3 This derogation will remain in force for future years until further notice.
- 4 In line with Recommendation 7.13 of the 2018 Major Review of the Derogations Process – such a derogation should be declared well in advance of the expiry of the 2021.22 Declaration – ideally no later than 1st April 2021. It should not be left to the last minute as is usually the case.

6.2

Ideally NPWS should engage with Local Authorities with a view to providing managed services in urban areas – to include nest removal from specified locations and gathering of the pertinent statistics. Clearly this cannot happen this year, but it should be possible for next year as Local Authorities have already acknowledged the seriousness of the urban seagull issue.

6.3

Such a derogation should be properly advertised and explained to the public well in advance of the traditional 1st May date. It should also be flagged in advance to the Oireachtas and to Local Authorities as an essential public health and safety measure that is aligning us with all neighbouring jurisdictions on the issue.

6.4

Such a derogation should also be accompanied by a research budget and an announcement regarding research into urban seagull colonies over 2021 – 2023, ideally dove-tailing with the overhang to the current '**Seabirds Count**' programme caused by the pandemic, and ideally feeding into the next 5 yearly review of the Derogations Process.

6.5

In conclusion, such a derogation would constitute a legal, an appropriate and a proportionate (refer to expert legal opinion, August 2020, recommendations 6.3 and 6.4, and also 5.38) policy response to the escalating negative impacts of urban seagull colonies on human communities. Such a derogation will cause no harm whatsoever to seagull species that will quickly learn to nest away from people. And importantly, such a derogation would categorically and appropriately respect the overdue priority that must be given to the legitimate interests of public health and safety.

If the proposed funding for urban seagull research is also provided, this solution will bring a balanced and parallel approach to the urban seagull issue, which overturns a flawed policy since 2016 which has made legitimate human interests of health and safety subordinate to the interests of a proliferating and totally unmanaged urban seagull population.

Conversely, a failure to provide such a derogation again this year, in the face of the evidence, legal opinion, the actual law and international precedents available, will see the State persisting with a policy – in the face of overwhelming contrary evidence and precedents – which denies essential protections to citizens and treats seagulls as being more important than people – even in our homes, schools and hospitals.

Any continuation of this position beyond the 2021.22 Derogation Declaration is simply unconscionable.

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