



**An Roinn  
Cultúir, Oidhreachta agus Gaeltachta**  

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**Department of  
Culture, Heritage and the Gaeltacht**

## Review of the Derogation Process under Article 9(1)(a) of the EU Birds Directive

Public consultation

The Department of Culture, Heritage and the Gaeltacht (DCHG) is seeking views in relation to the Derogation Process under Article 9(a) of the EU Birds Directive.

## Table of Contents

1. Executive Summary.....	3
2. Introduction and context .....	4
3. Policy overview .....	4
3.1 The EU Birds Directive.....	4
3.2 Articles 5 to 8 of the EU Birds Directive .....	5
3.3 Article 9 of the EU Birds Directive .....	6
3.4 General principles of the Article 9 derogation process .....	6
4. Derogation circumstances .....	7
4.1 Public Health and Safety .....	7
4.2 Air safety .....	8
4.3 Damage to crops, livestock, forests, fisheries and water .....	8
4.4 Protection of flora and fauna .....	9
5. Overview of species listed on Declarations for 2017/2018.....	9
6. Declarations for 2017/2018 .....	10
6.1 General Declaration (1st May 2017 – 30 April 2018).....	10
6.2 Air safety Declaration (1st May 2017 – 30 April 2018) .....	11
7. Guidelines for submission .....	12

## 1. Executive Summary

The Department of Culture, Heritage and the Gaeltacht (DCHG) is seeking views in relation to the Derogation Process under Article 9(1)(a) of the EU Birds Directive including submissions relating to:

- the species included on the derogation list, including species status and distribution, period for which the species is listed, population status and threats, rationale for their inclusion, and methods of control.
- the extent to which these species give rise to issues regarding public health and safety, air safety, damage to crops, livestock, forests, fisheries, water, and protection of flora and fauna.
- National and European legislation in relation to the EU Birds Directive, in particular Article 9(1)(a)
- Recommendations for future Declarations, including the species and process involved.
- Any other issues in relation to Article 9(1)(a) of the EU Birds Directive

This public consultation forms part of DCHG's five-yearly review of the derogation process. This review process includes a full review of the extent of the issues pertaining to species included on the derogation list (Declaration), the ecological status of these species, and overview of the approach of several other EU member states towards Article 9(1)(a).

The public consultation process will close at 17.00 on 4<sup>th</sup> May 2018.

## 2. Introduction and context

The Department of Culture, Heritage and the Gaeltacht (DCHG) provides the legislative and policy framework for the conservation of nature and biodiversity in Ireland. The Birds Directive (Directive 2009/147/EC) on the conservation of wild birds is implemented in Ireland, *inter alia*, under the Wildlife Act. 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, Member States may derogate from these terms for one or more of the following reasons:

- public health and safety;
- air safety;
- prevent serious damage to crops, livestock, forests, fisheries and water;
- protection of flora and fauna.

In Ireland these derogations are achieved by the competent authority, the Minister for DCHG, by way of *Declarations* made under the European Communities (Wildlife Act, 1976) (Amendment) Regulations 1986, as amended. These Declarations are reviewed annually for publication in April each year. There are two Declarations for the most recent year (May 2017 – April 2018), comprising the general state-wide declaration and an air-safety declaration.

This consultation document is aimed at providing information to inform stakeholders and the wider public about the current Declarations. It draws information from more detailed reports on species status, the extent of issues to which these species give rise, and legislation surrounding these Declarations.

## 3. Policy overview

### 3.1 The EU Birds Directive

Directive 2009/147/EEC (the Birds Directive), provides a framework for the protection, management and control of all wild birds naturally occurring in the EU and lays down rules for their exploitation (Article 1). The Directive provides for a suite of measures to be taken by Member States to maintain populations of all wild bird species. These include provision for the maintenance or re-establishment of habitats (Article 3), and provision for the establishment of Special Protection Areas for certain species (Article 4). Other measures include the requirement for Member

States to encourage relevant research and work that will support the protection, management and use of wild birds (Article 10).

### 3.2 Articles 5 to 8 of the EU Birds Directive

Article 5 of the Directive provides for the establishment of a general scheme of protection for all wild birds. This includes a prohibition of, *inter alia*, the deliberate killing or capture of wild bird species, and any deliberate destruction, damage to or collection of their nests and eggs.

Article 6 places restrictions on the sale and keeping of bird species.

Article 7 makes provision for a system for managing the hunting (including falconry) of those birds listed in Annex II of the Directive. This includes a requirement to ensure that birds are not hunted during the periods of their greatest vulnerability, such as the spring migratory period and during the breeding season. A Guidance document for the implementation of Article 7 in Member States (European Commission 2008) refers extensively to Article 9 and provides some guidance for its use.

Article 8 prohibits the large scale and non-selective means of bird killing, in particular those listed in Annex IV of the Directive.

Member States may derogate from the provisions of Articles 5 to 8 in accordance with Article 9.

### 3.3 Article 9 of the EU Birds Directive

The text from Article 9 of the EU Birds Directive is as follows:

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

### 3.4 General principles of the Article 9 derogation process

Article 9 allows Member States to derogate from the basic prohibitions listed above provided ALL three following conditions are fulfilled:

- there is no other satisfactory solution;

- one of the reasons listed in 9(1)(a), 9(1)(b), or 9(1)(c) applies;
- and the technical requirements of Article 9(2) are fulfilled.

Member States are obliged to submit an annual report to the European Commission on all derogations issued under Article 9. This is to ensure that the consequences of these derogations are not incompatible with the Directive, *i.e.* they do not undermine the conservation of the species for which derogations have been granted. These derogations must be justified in relation to the overall objectives of the Directive, *i.e.* they should not lead to a situation where a species' population and range is reduced to such an extent that it becomes vulnerable or leads to an unfavourable conservation state.

A European Commission (2008) guidance document for hunting under the Birds Directive provides useful elaboration of provisions of Article 9. In this document, it is stipulated that “*derogations are ‘exceptions’ which allow for some flexibility in the application of a law*”. The conservation objective, however, remains for the species to which the derogation applies.

## 4. Derogation circumstances

### 4.1 Public Health and Safety

Wildlife has been an important source of infectious diseases transmissible to humans throughout history, and zoonosis<sup>1</sup> with a wildlife reservoir constitutes a major human health problem globally. Birds are susceptible to many of the bacterial diseases common to humans (Benskin *et al.* 2009), and *Salmonellae*, *Campylobacter*, *Listeria* and *E. coli*, have all been proven prevalent in a diverse range of bird species groups.

Some species can pose direct conflict with humans during the breeding season when defending their nests and/or broods. There have been increasing reports of direct human conflict, in particular with large-sized gulls, in urban areas in recent decades, in parts of Europe (Calladine *et al.* 2006, Huig *et al.* 2016, Beasley 2017) and North America (Clark *et al.* 2015). Furthermore, they have been implicated in the contamination of water sources, spreading of litter (through destruction of refuse bags left exposed) and noise pollution (especially during chick-rearing). This aggressive behaviour is heightened during the chick-rearing stages (mid – late summer). However, this conflict has extended beyond nesting birds, and there is increasing conflict in public areas where humans are feeding the birds. Specifically, individual ‘rogue’ gulls are known to take food directly from humans.

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<sup>1</sup> Zoonoses are infectious diseases of animals that can naturally be transmitted to humans

In Ireland there are four species currently on the General Derogation that have been included for reasons of public health due to disease and contamination, comprising Feral Pigeon, Collared Dove, Magpie and Hooded Crow. The allowable period for control of these species for this reason is year-round.

A further three species were included in the General Declaration in 2017/18, namely Lesser Black-backed Gull, Herring Gull and Great Black-backed Gull, for public safety reasons for a specific area in north County Dublin. This was aimed as a pilot project, where the removal of a select number of nests and eggs of Herring Gulls, Greater Black-back Gulls and Lesser Black-backed Gulls was allowed as part of the derogation granted.

#### 4.2 Air safety

Birds are an air safety hazard and present a risk of collision or bird strike with aircraft. This risk is considered to be greatest during take-off, approach, climb and landing. In terms of aircraft damage, many bird strikes will have no effect, however where damage occurs the effects can range from minor (e.g. Soldatini *et al.* 2010), where a strike may lead to an aircraft inspection to catastrophic with structural failure which cannot be repaired.

To allow for the control of birds for the purposes of air safety in Ireland, airports can apply for species to be included in the Air Safety Declaration. These species are considered to be a risk to air safety in Ireland and the Minister is satisfied that no other solution exists, other than to capture, kill or otherwise interfere with those species listed.

#### 4.3 Damage to crops, livestock, forests, fisheries and water

It is perceived that many wildlife species have a negative impact on farming (crops and livestock), forests, and fisheries and water. Conflicts involving birds are diverse in nature, and range from direct impacts, such as predation, and competition for or loss of resources such as reducing available grazing and in the loss of crop yield. Crop damage is the degradation of crops through consumption, damage to roots, and can also be caused by trampling.

The species currently on the General Declaration in Ireland with respect to livestock, forests, fisheries and water are listed for agricultural reasons. There are currently five species on the General Declaration for the following reasons:

- Damage to livestock: Magpie, Hooded Crow. Control is between December and May, during the peak lambing and calving period.
- Damage cereal crops: Woodpigeon, Jackdaw, Rook. Control is between November and May, during the early growth phases of the crop.



- Damage livestock feedlots: Jackdaw, Rook. Control is between November and May, during the period when livestock are housed and/ or fed large amounts of supplementary meal

#### 4.4 Protection of flora and fauna

Under the General Declaration, a derogation may apply where a species has been shown to impact on native flora and fauna, or on game stocks. There are two species, Magpie and Hooded Crow, currently on the General Declaration in Ireland with respect to the protection of flora and fauna, and game stocks. The allowable period of control is restricted to between February and September, during the bird breeding season up to and including the fledging period.

### 5. Overview of species listed on Declarations for 2017/2018

A total of 23 species are being assessed as part of this review, including 21 species that are listed on one or both of the Air Safety and the General Declarations for 2017/18 and a further two species that are not on the current Declarations, but that may be included. The list includes 11 waterbirds, one bird of prey and 11 passerine or near-passerines. Of these species, 10 species are showing increasing trends in Ireland, a further nine are declining and three are stable. Carrion Crow is very rare in Ireland and its current status is not fully known. Some species are of heightened conservation concern in Ireland and/or in Europe. An overview of the trends and status of the species included on the Declarations is presented in Table 1.

Table 1. Overview of the species listed on the Declarations, including details about their occurrence in Ireland and their status in Ireland and Europe.

Species	Declaration	Season*	Trend National	Trend Europe	National status (BoCCI)**	European status (BiE2)***
Grey Heron	Air safety	Y	↑	↑	●	●
Whooper Swan	Air safety	W	↑	↑	●	●
Mute Swan	Air safety	Y	→	↑	●	●
Buzzard	Air safety	Y	↑	↑	●	●
Golden Plover	Air safety	W	↓	↓	●	●
Lapwing	Air safety	W	↓	↓	●	●
Curlew	Air safety	W	↓	↓	●	●
Black-headed Gull	Air safety	W	↓	↓	●	●
Common Gull	Air safety	W	↓	↓	●	●
Lesser Black-backed Gull	General, Air safety	Y	↑	↑	●	●
Herring Gull	General, Air safety	Y	↓	↑	●	●
Great Black-backed Gull	General, Air safety	Y	↓	↑	●	●
Feral Pigeon	General, Air safety	Y	↑	→	●	●
Woodpigeon	General, Air safety	Y	↑	↑	●	●

<b>Collared Dove</b>	General, Air safety	Y	↑	↑	●	●
<b>Swallow</b>	Air safety	S	→	↓	●	●
<b>Magpie</b>	General, Air safety	Y	↓	↓	●	●
<b>Jackdaw</b>	General, Air safety	Y	↑	→	●	●
<b>Rook</b>	General, Air safety	Y	→	→	●	●
<b>Carrion Crow</b>	-	Y	-	→	-	●
<b>Hooded Crow</b>	General, Air safety	Y	↑	→	●	●
<b>Starling</b>	Air safety	Y	↓	↓	●	●
<b>House Sparrow</b>	-	Y	↑	↓	●	●

\* Time of year each species occurs in Ireland (Y = year-round, W = winter, S = summer)

\*\* Birds of Conservation Concern in Ireland, ● = Green-listed, ● = Amber, ● = Red (Colhoun and Cummins 2013)

\*\*\* Birds in Europe 2, ● = Secure, ● = Depleted, ● = Declining, ● = Vulnerable (BirdLife International 2004)

## 6. Declarations for 2017/2018

### 6.1 General Declaration (1st May 2017 – 30 April 2018)

The Minister for Arts, Heritage and the Gaeltacht, pursuant to Regulation 3(1)(a) of the European Communities (Wildlife Act, 1976) (Amendment) Regulations, 1986, as amended, signed a State-wide declaration for the 12 month period from 1st May 2017 to 30th April 2018. A separate countrywide declaration was signed in respect of air safety. The State-wide Declaration lists a number of wild bird species that may be captured or killed or otherwise interfered with on any property by any of the means, arrangements or methods set out in Table 2 below.

Table 2. State-wide declaration (1st May 2017 – 30 April 2018)

Species	Rationale under Article 9(1)(a) of the Birds Directive	Method of capture or killing	Area/ time period covered
Hooded/ Grey Crow	Threat to public health and vector in the spread of animal diseases; prevent serious damage to livestock; protection of fauna, notably the nests and young of game birds)	Shooting with rifle or shotgun. Cage traps with or without decoys subject to conditions	State-wide; at specified times of year
Magpie	Threat to public health and vector in the spread of animal diseases; prevent serious damage to livestock; protection of fauna, notably the nests and young of game birds)	Shooting with rifle or shotgun. Cage traps with or without decoys subject to conditions	State-wide; at specified times of year
Rook	Reason: Prevent serious damage to cereal crops, brassicas and root crops such as potatoes and beet; prevent damage to livestock feedlots)	Shooting with rifle or shotgun	State-wide; at specified times of year
Jackdaw	Prevent serious damage to cereal crops, brassicas and root crops such as potatoes and beet; prevent damage to livestock feedlots)	Shooting with rifle or shotgun	State-wide; at specified times of year

Woodpigeon	Prevent serious damage to arable crops, including cereals, legumes and brassicas; threat to public health notably contamination of food storage)	Shooting with rifle or shotgun	State-wide at all times of the year
Feral Pigeon	Prevent serious damage to arable crops, including cereals, legumes and brassicas; threat to public health notably contamination of food storage)	Shooting with rifle or shotgun. Non meat based poison 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	State-wide at all times of the year
Herring Gull Greater Black-backed Gull Lesser Black-backed Gull	Threat to public safety	Taking the nests or taking the eggs	Confined to an area of north Co. Dublin at all times of the year

## 6.2 Air safety Declaration (1st May 2017 – 30 April 2018)

This declaration states that the Minister, being of the opinion that the species referred to below represent a threat to air safety and being satisfied that no other satisfactory solution exists, declares that any of the species listed below may be captured or killed according to the means set out in the Second Schedule to the European Communities (Wildlife Act, 1976) (Amendment) Regulations, 1986, as amended, throughout the State by the owner and occupier or agent or any owner or occupier of any property on which a threat to air safety is represented by any of the below species.

Table 3. Species listed on the air safety declaration (1<sup>st</sup> May 2017 – 30 April 2018):

Species	
Black-headed Gull	Collared Dove
Common Gull	Common Buzzard (Dublin airport and Casement aerodrome)
Herring Gull	Eurasian Curlew (Dublin airport)
Greater Black-backed Gull	Barn Swallow (Shannon airport)
Lesser Black-backed Gull	Grey Heron (Shannon airport)
Rook	Mute Swan and Whooper Swan (Shannon airport)
Jackdaw	Golden Plover
Magpie	Hooded (Grey) Crow
Starling	Woodpigeon
Lapwing	Feral Pigeon

## 7. Guidelines for submission

The Department of Culture, Heritage and the Gaeltacht (DCHG) is seeking views in relation to the Derogation Process under Article 9(1)(a) of the EU Birds Directive including submissions relating to:

- the species included on the derogation list, including species status and distribution, period for which the species is listed, population status and threats, rationale for their inclusion, and methods of control.
- the extent to which these species give rise to issues regarding public health and safety, air safety, damage to crops, livestock, forests, fisheries, water, and protection of flora and fauna.
- National and European legislation in relation to the EU Birds Directive, in particular Article 9(1)(a)
- Recommendations for future Declarations, including the species and process involved.
- Any other issues in relation to Article 9(1)(a) of the EU Birds Directive

Written submissions and observations may be made by writing 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: "Article 9a Consultation"

Or by Email to:

[npws.derogationart9@gmail.com](mailto:npws.derogationart9@gmail.com)

The closing date for receipt of submissions and observations is 17.00 on 4<sup>th</sup> May 2018.

*All submissions must include the full name and address of the person making the submission and where relevant the name of the body or organisation represented. Please note that responses to this consultation are subject to provisions of the Freedom of Information Act 2014. Confidential or commercially sensitive information should be clearly identified in your submission. However parties should also note that any or all responses to the consultation are subject in their entirety to the provisions of the FOI Acts and may be published by the Department.*

## References

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