

Designated Areas Appeals Advisory Board Guidelines November 2014

1. Legal Basis for establishment.

The European Communities (Natural Habitats) Regulations, 1997 (S.I. No. 94 of 1997) transposed the EU Habitats Directive and Birds Directive into national legislation. These Regulations have now been replaced by the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011)

Under Regulation 13(1) of the 2011 Regulations, “A person on whom a notice is served under Regulation 12(2) or any other person having or being entitled to an interest in or over the land comprising the site, or part thereof, ...” may object to the inclusion of lands within a Special Area of Conservation within the time limits and manner set out. Regulation 17(1) makes the same provisions in respect of Special Protection Areas.

Regulations 13(4) and 17(4) provide for the Minister to accept Recommendations from the Board

Section 16(7) of the Wildlife (Amendment) Act, 2000 makes similar provisions in respect of Natural Heritage Areas.

The spirit of the Regulations above is construed as providing grounds for hearing objections from those whose interests are not included in sites on the candidate list and who wish to have those interests included.

Following the introduction of the Regulations, the Minister established a non-statutory body to provide recommendations in relations to specific objections. The Minister will consider such recommendations when coming to a decision on a specific appeal, but is not bound by them.

Whereas the legislative provisions specifically relate to “objections” on the part of land owners, the terms “appeals” and “appellants” are commonly used in the context of the work of the Board are considered interchangeable.

2. Name of body which will consider objections

This shall be referred to as the “Designated Areas Appeals Advisory Board” (DAAAB) and is hereinafter referred to as “The Advisory Board”.

3. Composition of the Advisory Board

In respect of any appeal hearing, the Advisory Board shall comprise of a Chairperson and four Board members. The membership of the Advisory Board will be comprised as follows: -

- Chairperson, from a panel as appointed by the Minister and
- Two Advisory Board members to be provided from each of the two panels which are constituted as follows:-
 - Membership of the **Landowner/Users/Producers Panel** will be comprised of two members from any of the following nomination bodies – The Irish Farmers Association, the Irish Creamery Milk Suppliers Association and the Irish Business and Employers Confederation.
 - Nominations for the **Conservation Groups Panel** will be provided by the Environmental Pillar of Social Partnership, and will be drawn from the organisations participating in that Pillar.

Each panel is comprised of nominees drawn from the organisations involved who will serve on the Advisory Board.

The Advisory Board will have available to it an independent Scientific Adviser to assist in the interpretation of scientific reports, data, etc.

The Advisory Board will be provided with secretarial services as appropriate.

Membership of the Advisory Board will be reviewed from time to time. Each member will be eligible for re-nomination by the Minister or nominating body as appropriate. There may be more than one Chairperson appointed by the Minister at any one time, to facilitate the hearing of appeals. Similarly, the Landowners/Users/Producers Panel and the Conservation Groups Panel nominations may, if required by the Minister, extend to such numbers as may be required to ensure that there is an adequate pool of available members at any given time to facilitate the scheduling of hearings without undue delay.

Membership of the Advisory Board will not be full time. The Advisory Board will sit as often as is necessary to complete its work.

Travelling and subsistence expenses properly incurred by Advisory Board members in the course of the Advisory Board's work will be paid in accordance with Civil Service rates current at material times. A *Per Diem* allowance may also be payable. The rate and applicability of this allowance is subject to approval by the Department of Finance.

4. Procedure for hearing of Objections.

The Advisory Board will comprise of the Chairperson and two representatives from each Panel.

A quorum will consist of the Chairperson and two Advisory Board nominees of whom at least one Advisory Board member should be from each of the

aforementioned Panels. In the event of a tie, the casting vote in arriving at a Recommendation will be that of the Chairperson.

- The Advisory Board will notify the Objector of the date, time and venue at which their case will be considered, generally giving a minimum of 7 days advance notice.
 - The Advisory Board will hear/see submissions from the National Parks and Wildlife in the first instance and then hear/see the Objector's case.
 - The Objector's case may be made on "scientific" grounds only (see Regulations). Objections based on reasons of a socio-economic, historical or potential future development nature can not be considered. The Board Secretariat will administer a scheme of grant assistance to assist appellants offset some of the cost involved in the procurement of expert scientific assistance. The upper limit of this grant will be agreed with the Minister from time to time.
 - The Advisory Board will consider objections on the basis of written submissions and/or oral submissions as considered appropriate by the Chairperson. As outlined above, these submissions must be of a scientific nature. Both the appellant and the NPWS will be given the opportunity to submit detailed scientific reports to the Board, and will also be given an opportunity to provide written comment on the scientific report produced by the opposing side in advance of any appeal hearing.
 - The Secretariat will endeavour to ensure that Board Members receive all relevant documentation, including scientific reports, maps, and other information relevant to the appeal, at least three weeks prior to the commencement of the hearing. Written comments by the appellant and/or NPWS on the opposing scientific report may not be available until nearer to the hearing.
 - An Objector may withdraw his/her objection at any time up to and including the day on which the Advisory Board is due to consider the objection. However, information gathered up to the point of withdrawal may still have implications for the proposed designation.
5. Criteria to be used by the Advisory Board when considering objections.
- The Advisory Board will only consider on a formal basis cases where the objector was offered an opportunity to have the matters at issue dealt with on an informal basis, (by the Department of Arts, Heritage and the Gaeltacht) and where this offer has not facilitated a satisfactory conclusion from the objectors point of view. Objections may not be lodged with the Board directly.

- NPWS is the proposer of designations and must show evidence that their proposals are necessary for the purposes of and comply with the Habitats Regulations and/or Wildlife Acts.
- The Advisory Board may recommend that the proposed area for designation (SAC, SPA or NHA) on an Objector's own land may remain as it is or be extended or be reduced.
- The Advisory Board will determine whether Priority/Non Priority Habitat is/is not present on site by reference to scientific criteria set down in the EU Habitats Directive and to the evidence presented.
- In relation to Special Protection Areas, the Advisory Board will also determine the existence or otherwise of "habitat of a species", which is defined in the 2011 Birds and Habitats Regulations as follows:
"habitat of a species" means an environment defined by specific abiotic and biotic factors, in which the species lives or upon which it depends at any stage of its biological cycle.
- The Board will also consider the overall scientific basis used for selecting areas for designation, as SAC or SPA.
- The Board will also consider the scientific basis for selecting NHA's in accordance with the Wildlife Acts.
- Objections must be assessed on the basis of the habitats present at the time of notification in the case of cSACs or the coming into force of the Birds Directive in the case of SPAs. Subsequent changes, damage, etc., should not be used as reasons for recommending the exclusion of a site or part of a site. If it is not possible to determine whether changes/damage took place prior to or subsequent to notification / coming into force of the Birds Directive, the Advisory Board must assume that it happened subsequently. It should be noted that the European Commission considers that the Habitats Directive should have been implemented by 1995.
- Appeals Board may not use hearsay or general assumptions as a basis for determining their Recommendation in any case. Only the facts as presented in the scientific reports of the respective parties, combined with the advice, if any, provided by the Scientific Adviser to the Appeals Board, as well as any nationally agreed policies, may be used for such purposes.
- The Board must take cognisance of relevant national and EU case law regarding the interpretation and implementation of the Habitats and Birds Directives, the Habitats Regulations and the Wildlife Acts when considering objections.

- Where the Advisory Board considers it necessary in any particular case, the Board may allow an Objector to commission an independent expert to report on a site. A panel of suitably qualified experts will be put in place to provide this service. Insofar as possible the experts who comprise this panel will not be those who were involved in determining the originally proposed SAC designation. An objector will be free to procure the services of a suitably qualified expert who is not on the official panel.
- The Chairperson may adjourn a hearing as often as is necessary and is consistent with fairness and equity. For example, in situations where more complete scientific information is required in respect of a particular site.
- The Advisory Board will advise the Minister of its Recommendation in each case that comes before it and the reasons appertaining thereto having heard all submissions which it considers to be relevant.
- The Advisory Board will communicate its Recommendation in each case to the Minister within 14 days of considering the appeal at oral hearing or otherwise.
- The Minister will consider the Recommendation of the Advisory Board in each case and arrange for the Objector to be advised of his Decision. The Site Designations Section will arrange revision of boundary maps as necessary.

6. Policy Directives

From time to time, the Minister may issue policy directives to the Board which must be taken into account in making recommendations in relation to appeals. In this regard:

- The Minister has stated that it is not practical to exclude roads and/or tracks from Designated Areas.
- Areas which have been damaged post-designation should be retained within the designated area.
- The Minister has also determined that making recommendations in relation to 'Activities Requiring Consent' and/or planning issues, including land-use planning, Farm Plans and Management Plans etc., is outside the remit of the Board.
- There are stand-alone protection requirements under the Habitats Directive, Birds Directive and Wildlife Acts. It is not acceptable to assume that the protection of the Habitats Regulations, which transposed the Habitats Directive and Birds Directive, or Wildlife Acts is not required simply because other legislative codes (Planning Acts,

Nitrates Directive, REPS Guidelines, etc.) may possibly provide some protection to the habitats/species concerned.

7. Budget/Resources of Advisory Board.

The Advisory Board will be served by a Secretariat which will be provided with resources as considered appropriate from time to time. Office facilities and facilities for hearings will be provided as required. A Scientific Advisor will also be made available.

8. Quality Customer Service

In the conduct of its work the Advisory Board is committed to operating in a fair and transparent way as would be consistent with current legislation and the Quality Customer Service Plan of the Department of Arts, Heritage and the Gaeltacht.

Appeals will be heard through Irish if required, and documentation can be provided to appellants if required.

9. Freedom of Information Act and European Communities (Access to Information on the Environment) Regulations

In accordance with the provisions of the Freedom of Information Act and the European Communities (Access to Information in the Environment) Regulations the business of the Advisory Board will be open to public scrutiny.

10. Ethics in Public Office Act

The provisions of the Ethics in Public Office Act apply to the Chairperson(s) and Members of the Advisory Board.

11. Conflict of Interest

The Chairperson and Members of the Advisory Board will declare any conflict of interest arising. A decision on whether the individual concerned should absent themselves from an individual appeal will be made on a case by case basis. Conflicts of interest can arise from, amongst other things,

- ownership/co-ownership of the site in question,
- personal, professional or business relationship with the owners(s), both past and present
- potential or actual competing business interests, etc.

12. Conduct of Board members

Board members should be free to conduct their duties free from any form of harassment, sexual harassment, bullying or other threatening behaviour. All who act on and for the Board are expected to respect the right to dignity of each individual. Bullying in any form is not accepted by the Department of the Environment, Heritage and Local Government and will not be tolerated in any body operating under the aegis of the Department.

Objectors are entitled to the full respect and attention of the Board, both during the course of an appeal hearing and throughout any associated site inspection. Accordingly, the use of mobile phones, personal digital assistants (PDA's), laptop computers, etc. for business not directly associated with the appeal in hand is considered inappropriate. This would also apply to the closed sessions of hearings, where Board members are entitled to the full respect and attention of their fellow Board members.

13. Disclosure of Information

Board members should not divulge their Recommendation(s) to the objectors or their agent(s). It has been a long-standing requirement of the Minister of the day that such Recommendations may be considered by him and formally decided upon before the objector is notified of the Recommendation. This is so that the Minister has a genuine opportunity to consider the Recommendation, with the option of rejecting the recommendation if he/she considers appropriate.

Facilities exist in accordance with the provisions of the Freedom of Information Act, 1997 and the European Communities (Access to Information on the Environment) Regulations, 2007 for the public to obtain information relevant to their individual appeals, etc., including the records of the Board.

Board members should not express an opinion to an objector or to any member of the public relating to any matter which is before the Board, other than the giving of information in relation to procedures.

Information in relation to the following should not be given by any Board member to any party, observer or other member of the public:-

- the names of the Board members dealing with particular cases in advance of the case commencing,
- specific information in relation to Board meetings, including statements, observations, submissions, other contributions etc., made by individual board members
- the contents of Board recommendations to the Minister during the currency of an appeal until they are generally available in accordance with proper procedures

- Board members may report back to their parent organisations / Pillar, and/or consult with internal experts with a view to member's participation, but only on the strict understanding that the parent organisation / Pillar will not in any way facilitate divulging individual recommendations, etc., to an objector or other parties prior to the Minister making a formal decision on that case.

Any enquiry from the media to a Board member should be directed to the Chairperson in the first instance.

Except with the written consent of the Chairperson, no Board member may

- make a statement or give an interview to the media about the performance of the functions of the Board,
- prepare for publication, publish or otherwise cause or permit to be published or broadcast by radio or television or other media any matter relating to the performance of the functions of the Board,
- place or assist in placing in the public domain any view or views relating to general appeal matters where such views could reasonably be interpreted as, in any way, prejudicing or hindering the impartial carrying out of that person's duties within the Board or could reasonably be interpreted as affecting the impartiality and objectivity of the Board.