



NPWS

An tSeirbhís Páircanna
Náisiúnta agus Fíadhúlra
National Parks and Wildlife
Service

**Derogation Number
DER-OTTER-2026-03**

**EUROPEAN COMMUNITIES (BIRDS AND NATURAL HABITATS) REGULATIONS, 2011
(S.I. No 477 of 2011)**

DEROGATION

Granted under Regulation 54 of the European Communities (Birds and Natural Habitats) Regulations 2011, hereinafter referred to as “the Habitats Regulations”.

The Minister for Housing, Local Government & Heritage, in exercise of the powers conferred on him by Regulation 54 of the Habitats Regulations hereby grants to **Caitrín Foley of Housing and Water Services Department, Dún Laoghaire-Rathdown County Council, 3rd Floor, 2 County Hall, Marine Road, Dún Laoghaire, County Dublin** a derogation. It is stated that this derogation is issued:

- A. In the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment
- B. As there is no satisfactory alternative, and the action authorised by this derogation will not be detrimental to the maintenance of the population of **otters** referred to below at a favourable conservation status in their natural range.

This derogation authorises the following:

- 1. disturbance
- 2. Actions authorised within the derogation in respect of **otters**



Terms and Conditions

1. This derogation is granted solely to allow the activities specified in connection with the **works** located at **Glenavon Park, Ballybrack, County Dublin**, for **Caitrín Foley**.
2. All activities authorised by this derogation, and all equipment used in connection herewith, shall be carried out, constructed and maintained (as the case may be) so as to avoid unnecessary injury or distress to any species of **Otter**. Anything done other than in accordance with the terms of this derogation may constitute an offence
3. This derogation may be modified or revoked, for stated reasons, at any time.
4. The mitigation measures outlined in the application report (**Otter (*Lutra lutra*) derogation licence report & application for the Deansgrange Stream, Co. Dublin**), together with any changes or clarification agreed in correspondence between NPWS and the agent or applicant, are to be carried out. Strict adherence must be paid to all the proposed measures in the application.
5. The actions which this derogation authorise shall be completed between the **1st September – 31st December 2026, inclusive**.
6. The works will be supervised by an ecologist: **Bill Brazier**
7. If this derogation addresses works that are subject of a planning application, no such works permitted under this derogation can occur until planning permission is granted.
8. If this derogation expires prior to works permitted under this derogation commencing, a new application must be sought in advance, including the provision of any updated data or reports.
9. Works are to comply with **NRA's 'Guidelines for the treatment of Otters prior to the construction of National Road Scheme.'**
10. This derogation shall be produced for inspection on a request being made on that behalf by a member of An Garda Síochána or an authorised NPWS officer appointed under Regulation 4 of the Habitats Regulations.
11. The local **NPWS Conservation Ranger – Seán Meehan**, sean.meehan@npws.gov.ie, must be contacted prior to the commencement of any activity, and if bats are detected on site during the course of the work, under the terms of this derogation.
12. On completion of the activities which this derogation authorises, all recordings of otter affected will be made using the standardised data form provided below and must be submitted to the NPWS **within four weeks of the expiry date** of this derogation. Included with the below returns form, a report must be submitted to wildlife.reports@npws.gov.ie detailing results of works and success of mitigation. **Both documents must be submitted to constitute a derogation return.**



For the Minister for Housing, Local Government & Heritage

(an officer authorised by the Minister to sign on his behalf)

05 March 2026

Any query in relation to this derogation should be sent to reg54derogations@npws.gov.ie





Derogation Assessment

Name of Applicant: Caitrín Foley

Location/Name of Project: Glenavon Park, Ballybrack, County Dublin

Tick the following prohibition as chosen on the application:

(a) Deliberately capture or kill any specimen of the relevant species in the wild	<input type="checkbox"/>
(b) Deliberately disturb these species particularly during the period of breeding, rearing, hibernation and migration	<input checked="" type="checkbox"/>
(c) Deliberately take or destroy eggs of the relevant species in the wild	<input type="checkbox"/>
(d) Damage or destroy a breeding or resting place of such an animal, or	<input type="checkbox"/>
(e) Keep, transport, sell, exchange, offer for sale or offer for exchange any specimen of the relevant species taken in the wild, other than those taken legally as referred to in Article 12(2) of the Habitats Directive.	<input type="checkbox"/>
(a) Deliberately pick, collect, cut, uproot or destroy any specimen of these species in the wild, or	<input type="checkbox"/>
(b) Keep, transport, sell, exchange, offer for sale or offer for exchange any specimen of these species taken in the wild, other than those taken legally as referred to in Article 13(1)(b) of the Habitats Directive.	<input checked="" type="checkbox"/>

Test 1: A reason(s) listed in Regulation 54 (a)-(e) applies to the proposed activity

i. Tick which reason the applicant claims should be applied to the derogation

(a) In the interests of protecting wild flora and fauna and conserving natural habitats,	<input type="checkbox"/>
(b) To prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property	<input type="checkbox"/>
(c) In the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment,	<input checked="" type="checkbox"/>
(d) For the purpose of research and education, of re-populating and re-introducing these species and for the breeding operations necessary for these purposes, including artificial propagation of plants, or	<input type="checkbox"/>
(e) To allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species to the extent specified therein, which are referred to in the First Schedule.	<input type="checkbox"/>



ii. Test 1: Conclusion

Please tick the following where it applies:

There is a valid reason(s) listed in Regulation 54 (a)-(e) which applies to the proposed activity:	Yes	<input checked="" type="checkbox"/>
	No	<input type="checkbox"/>

Please outline your analysis below and state how the applicant has provided evidence to support your conclusion:

The application form and associated documentation provided by the applicant has been reviewed in full. The application relies on regulation 54(2)(c) *‘in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment’* as the reason chosen for a derogation that they believe applies to the proposed activity.

In the detail provided, it is clear that the applicants are relying on the reasons of public health and public safety aspect of Reason C. As outlined in the accompanying report titled “Deansgrange Stream Otter Survey”, a derogation is required for proposed works near deansgrange, Co. Dublin.

The objective of the works includes proposed flood alleviation/storage measures and biodiversity enhancement areas, flood defence embankments and associated works as part of the Deansgrange Flood Relief Scheme (FRS). The report further outlines on page 16 that the catchment area identified, has been designated at risk of flooding and the proposed works aim to manage this risk and provide the necessary protection.

It is clear that the applicants are also relying on the imperative reasons of overriding public interest, including those of a social or economic nature aspect of Reason C. The report notes that the FRS will “reduce flood risk to both residential and commercial property” and improve biodiversity through green corridors and wetland habitat. Finally, the report notes the FRS aligns with the National Planning framework and locally the Dún Laoghaire-Rathdown County Development Plan.

The applicant has provided evidence as to the nature and scale both of the public health and public safety aspect and the public interest including those of a social or economic nature for the proposed works and the proposed activity is necessary to achieve these overall objectives. Based on the above this application has passed Test 1 and can now proceed to Test 2.



Test 2: Absence of a satisfactory alternative

Please tick the following where it applies and add a comment below to support the recommendation:

The applicant has provided satisfactory evidence that alternative solutions have been considered and have given reasons why the proposed approach is the only satisfactory alternative:	Yes	<input checked="" type="checkbox"/>
	No	<input type="checkbox"/>

Please outline your analysis below and state how the applicant has provided evidence to support your conclusion (If you wish to add additional conditions please complete pg. 6):

The documentation submitted by the applicant has been reviewed, including the evidence for alternative solutions. The purpose of the derogation is to allow the following activity to take place:

- *Proposed flood alleviation/storage measures and biodiversity enhancement areas, flood defence embankments and associated works as part of the Deansgrange Flood Relief Scheme (FRS).*

The alternative solutions suggested by the applicant are:

1. “Do-Nothing” scenario

The ‘Do Nothing’ scenario is defined as the option involving no future expenditure on flood defences or maintenance of existing defences/channels and the abandonment of any existing practices. The implication is that the existing risk of flooding persists in the study area and possibly worsens over time. It would also result in a lost opportunity to integrate fish passage and improve/remediate aquatic habitats along the Deansgrange Stream. The ‘Do Nothing’ approach fails to accord with national and local planning policy and environmental protection objectives.

CR’s assessment – This FRS will help mitigate against flooding risk. Climate change is predicted to bring an increase in the severity and frequency of flooding events, impacting communities. This is not in compliance with local and national planning and environmental policies. The FRS will also enhance aquatic habitats for biodiversity along the Deansgrange Stream. The mitigation measures that are summarised on Pages 19 and 20 of the accompanying report¹ are robust and will ensure the protection of otter within 150 metres of the development. The long term gain for biodiversity within and along the stream, as a result of aquatic habitat improvements and remediation outweighs the temporary possible disturbance of otter during the works period. It is also noted that no holt or couch will be lost.

2. Alternative 1 – ‘Do Minimum’

The ‘Do Minimum’ approach consists predominantly of ongoing maintenance works or implementing additional minimal measures to reduce risk to specific areas with no strategy in place. This is in order to maintain the existing standard of protection and would generally involve repairing and reinforcing existing walls now and as repairs are needed in the future. This is not a suitable option due to existing flood pathways where there are no barriers to flow.

¹ Triturus (2026). Otter (Lutra lutra) derogation licence report & application for the Deansgrange Stream, Co. Dublin. January 2026.

CR's assessment – The 'Do Minimum' approach is unlikely to solve long term flooding issues along the Deansgrange Stream. Future maintenance and repairs works on an ongoing basis would likely result in repeated disturbance events for otter, possibly increasing in frequency to respond to more frequent flooding events. The FRS will address the flooding risk for the long-term and avoid the requirement for repeated repairs and maintenance works in the future.

3. Alternative 2 – Alternative designs / locations

From the detailed measures analysis (JBA & JBB, 2023), it has been found that there is only one viable option will deliver a sustainable and effective flood relief scheme, i.e. Option 1 - Railway Culvert Option. No alternatives are viable or deliver the required standard of protection. This is unusual, but the restrictions and constraints with all the main measures means that only a combination of all viable measures can be assembled to deliver this scheme. There is a limited number of options to reduce the flooding around Killiney Hill Road and those have been explored. There are key measures that combat the flood mechanisms within the catchment. It was found that the inclusion of walls at Killiney Hill Bridge, together with Glenavon Park storage (Measure F in JBA & KBB, 2023) generates the lowest design levels and greatest overall benefit relative to the baseline scenario and therefore is considered the preferred option configuration for the present-day scheme. The inclusion of Glenavon Park storage also has benefits in relation to improving public amenity space with a full landscape scheme and the storage has added benefits in managing the impacts of climate change.

CR's assessment – Alternative designs have been considered. However only one viable option has been identified. This option will deliver a sustainable and effective flood relief scheme and once the mitigation measures for otter are implemented, presents only possible short term disturbance to this species.

Conclusion

The applicant has provided satisfactory evidence that alternative solutions have clearly been considered, including the “do-nothing alternative”. Based on the assessment of the application documentation, it is regarded that the applicant has considered all available alternative solutions and at this time no other alternative or viable solutions are apparent.

Otter surveys were undertaken along a 3.4km section of the Deansgrange Stream, well beyond the 150 metre buffer zone as per the TII guidelines for protection of otter². A holt and a couch were identified during these surveys. Only the holt is within 150 metres of the works and as a precaution, is the focus of this application for a derogation licence. The holt was extensively monitored using a camera, under licence 020/2024, for a twenty week period between May and November 2025 with no otter activity at the holt detected. Pre-construction surveys will also be undertaken. Mitigation by design for otter has been incorporated into the CEMP for the works. The proposed mitigation measures are robust and extensive and will ensure that any disturbance to otter is short term. The holt will not be lost and its location, 140 metres from the works, also reduce the potential for disturbance.

The applicant is relying on the imperative reasons of overriding public interest, including those of a social or economic nature aspect of Reason C. Having weighed the possible solutions to solve the applicant's problem against the effects of a derogation on the species concerned, it is concluded that the application has passed Test 2 and should proceed to Test

3

Upon completion of your assessment, please return this Recommendation to WLU to continue the application process.

² <https://www.tii.ie/media/wsm1bxmv/guidelines-for-the-treatment-of-otters-prior-to-the-construction-of-national-road-schemes.pdf>



Test 3: Impact of a derogation on conservation status of the species

Please tick the following where it applies and add a comment below to support the recommendation:

The derogation would NOT be detrimental to the maintenance of the populations of the species in question at a favourable conservation status in their natural range.	Yes	<input checked="" type="checkbox"/>
	No	<input type="checkbox"/>

Please outline your analysis below and state how the applicant has provided evidence to support your conclusion. (If you wish to add additional conditions please complete pg. 6)

The proposed works may lead to some temporary, localised disturbance near a possible otter holt. There will be no direct impact to the possible holt and a mitigation plan is in place, including the deployment of trail cameras and fencing, to ensure disturbance is minimised and monitored.

The otter is in favourable conservation status and providing the mitigation measures are implemented the derogation would not be detrimental to the maintenance of the populations of the species in question at a favourable conservation status in their natural range.

If the answer above is Yes then the derogation may be granted, providing Tests 1 and 2 have also been met.

Upon completion of your assessment, please return this Recommendation to WLU to continue the application process.



Derogation decision

The application for a derogation under Regulation 54 of the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. 477 of 2011), as amended, has been assessed by officials in the Department and the following decision has been made:

Tick box where appropriate:

There is no satisfactory alternative

and the derogation is not detrimental to the maintenance of the populations of the species to which the Habitats Directive relates at a favourable conservation status in their natural range.

Therefore, a derogation may be granted to the applicant, since it is—

(a) in the interests of protecting wild fauna and flora and conserving natural habitats

(b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property,

(c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment,

(d) for the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants, or

(e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species to the extent specified therein, which are referred to in the First Schedule.

OR This application has been refused as one or more of the conditions set out above have not been met



The following conditions should be attached to the derogation:

- 1.
- 2.
- 3.
- 4.

[add additional conditions where required] |

Signed: .

Date: March 5, 2026

Position: Ecologist