



NPWS

An tSeirbhís Páirceanna
Náisiúnta agus Fíadhúlra
National Parks and Wildlife Service

**Derogation Number
DER-OTTER-2026-09**

**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 **Sean O’Sullivan of Kerry County Council, Kerry National Roads Office & Greenway Unit – Kerry County Council, The Island Centre, Castleisland, County Kerry, V92 TOCP** 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**



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Terms and Conditions

1. This derogation is granted solely to allow the activities specified in connection with the works located at **South Kerry Greenway Cahersiveen, County Kerry, for Sean O'Sullivan.**
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 (**Ecological Report to Inform an Application for Derogation Licence Under the European Communities (Birds and Natural Habitats) Regulations 2011–2021 pertaining to Otter (Lutra lutra)**), 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 **22nd May – 31st December 2026, inclusive.**
6. The works will be supervised by an ecologist: **Monica Kane**
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 – Jean Hamilton**, jean.hamilton@npws.gov.ie, must be contacted prior to the commencement of any activity, and if otters 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.**



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For the Minister for Housing, Local Government & Heritage

Fiona O' Mahony.

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

22 May 2026

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





Derogation Assessment

Name of Applicant: Sean O’Sullivan

Location/Name of Project: South Kerry Greenway, Cahersiveen, County Kerry

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 checked="" 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 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 imperative reasons of overriding public interest, including those of a social or economic nature aspect of Reason C. As outlined in the accompanying report titled “Supporting Information Document”, a derogation is required to facilitate proposed works at the South Kerry Greenway (SKG), stretching from Cahersiveen to the village of Glenbeigh, an approximately 27km long trail.

The overall objective of the works as outlined in the report involves the construction of the SKG, the derogation application relates to works to the Cahersiveen Railway Bridge which is noted as having otter holts in the vicinity. The report outlines that the Holts are currently inactive and the derogation is sought to temporarily block up the Holts.

In relation to the SKG, the report provides a number of headings under which the completed greenway will provide social and economic benefits including sustaining the local population, health and wellbeing, culture and heritage and tourism and socio-economic benefits. The report also highlights the project as an “example of sustainable development making use of previously abandoned infrastructure.” The SKG is expected to increase tourism to the region, regenerate the local economy through employment and the provision of services and promote health benefits.

The applicant has provided evidence as to the nature and scale of 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 application form and associated documentation provided by the applicant have been reviewed in full. The applicant has provided satisfactory evidence that they have considered alternative solutions, and have given valid reasons as to why the proposed approach is the only satisfactory alternative.

The first alternative option considered was the ‘Do-Nothing’ alternative. This option was considered unsatisfactory, as it would prevent the completion of the construction of the South Kerry Greenway project which, as outlined in Test 1, is required ‘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’. If the works to the railway bridge were not carried out, the Greenway would not be fit for purpose, as people would have to stop short of the bridge, turn back and find an alternative route via the local road network.

The second option considered was to proceed without mitigation. This option was considered unsatisfactory, as it may result in noise and visual disturbance to breeding otter arising from construction activity.

As regards alternative design options, the consultants state in their application form that it is not practically feasible to design an alternative route across the estuary. The creation of a new bridge at a new location would require new route option appraisal and planning processes and new methodologies and contractors, which would result in financial penalties and waste of public money.

Based on the above, this application has passed Test 2 and can now proceed to Test 3

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



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)

One confirmed, and three potential, Otter holts have been recorded during pre-construction surveys in the vicinity of the old railway bridge. All holts are currently inactive. While the Otter holts lie outside of the planning and construction boundaries, potential indirect disturbance to Otter during construction may occur arising from noise emissions and the physical presence of machinery and workers, and for that reason a derogation licence is being sought to temporarily block up the holts, all of which are currently inactive.

Ireland continues to remain a stronghold for the Eurasian Otter (*Lutra lutra*). The latest Article 17 report into the status of otter concluded that the population is stable overall and the species remains widespread and the overall conservation status is Favourable.

Proportionate and appropriate mitigation measures are being planned including the appointment of an ecological clerk of works and the installation of an artificial holt. Although the known holt will be blocked for the duration of the works, it will be reinstated once the works have been completed.

On this basis I am satisfied that 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.



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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: May 22, 2026

Position: Ecologist