



NPWS

An tSeirbhís Páirceanna
Náisiúnta agus Fiadhúlra
National Parks and Wildlife Service

**Derogation Number
DER-OTTER-2026-17**

**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 **Stephen Cull of Dublin City County Council, Civic Offices, Block 2, Floor 4, Wood Quay, Dublin 8, County Dublin, D08 RF3F** 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 **MV Cill Airne, Quay 16, North Wall Quay, North Wall, Dublin 1, D01 XE03**, for **Stephen Cull**.
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 (**Report to Support Derogation Licence Application Dublin District Heating Project**), 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 **28th August 2026 – 31st December 2027, inclusive**.
6. The works will be supervised by an ecologist: **Hannah Fearon, Miles Newman, Conor Malone & Michael Suttle**
7. The derogation does not provide consent to proceed with any works that may also be subject to another approval (for example, planning permission).
8. The derogation is based upon information provided in the application. Where this information may cease to be accurate due to the passage of time or changes to the circumstances giving rise to the need for the derogation, the derogation holder is responsible for notifying the NPWS.
9. 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.
10. Works are to comply with **NRA's [Guidelines for the Treatment of Otters Prior to the Construction of National Road Scheme](#)**.
11. 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.
12. The local **NPWS Conservation Ranger – Paul O'Flaherty**, paul.oflaherty@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.
13. 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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Náisiúnta agus Fiadhúlra
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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)

28 August 2026

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



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Derogation Assessment

Name of Applicant: Stephen Cull

Location/Name of Project: MV Cill Airne, North Wall, Dublin 1, D01 XE03

Tick the following prohibition as chosen on the application:

(a) Deliberately capture or kill any specimen of the relevant species in the wild	☐
(b) Deliberately disturb these species particularly during the period of breeding, rearing, hibernation and migration	☒
(c) Deliberately take or destroy eggs of the relevant species in the wild	☐
(d) Damage or destroy a breeding or resting place of such an animal, or	☐
(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.	☐
(a) Deliberately pick, collect, cut, uproot or destroy any specimen of these species in the wild, or	☐
(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.	☐

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,	☐
(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 re-populating and re-introducing these species and for the breeding operations necessary for these purposes, including 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.	☐

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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	☒
	No	☐

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 on page three of the accompanying report titled "Report to Support Derogation", a derogation is required to facilitate proposed works at the Dublin Waste to Energy facility in Poolbeg, Dublin.

The objective of the works as outlined in the report is to capture the heat produced at the facility and to re-use it to heat water and buildings in the Poolbeg, Ringsend and Docklands areas of Dublin City. The report further outlines on page 15 that the proposed works will contribute to Ireland's climate and energy targets through the reduction of carbon emissions and the use of fossil fuels. The report also highlights one of the objectives set out in CAP25 which plans to "phase out Ireland's fossil fuels and replace heating systems with low carbon alternatives such as heat pumps and district heating systems". Once the pipe network is connected and operational the report notes it will "provide heat to homes and commercial businesses" and "support the delivery of savings of 0.375 Metric tons of carbon dioxide equivalent".

The report lastly outlines that the proposed works will create a "a sustainable and efficient energy infrastructure for Dublin", increase security of supply and assist in contributing to climate targets.

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.



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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	☒
	No	☐

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: “facilitate the development of a highly efficient district heating system (i.e. Dublin District Heating Project (DDHP)”. The proposed development is required to “minimises carbon emissions, improves air quality, reduces dependence on imported fossil fuels, provides heat that is safe, good value, reliable and accessible to as many customers as possible on a commercial basis”.

The specific situation that needs to be addressed: is proximity of the identified otter breeding and resting places (located at site of M.V. Cill Airne) to the proposed works at City Quay, D01 XE03

The alternative solutions suggested by the applicant are:

1. “Do-Nothing” scenario: “this approach fails to accord with national and local planning policy. This would undermine national and EU commitments to climate targets and emission reductions.”
2. “Alternative Routings: “with respect to an alternative route to the North Wall Quay, a route along Mayor Street/Luas was assessed. However, the node was discounted as the Luas Red Line runs along this section and constrains future expansion of the network and there is high utility congestion in this area.”

The applicant has provided satisfactory evidence that alternative solutions have clearly been considered. As outlined on page 18, of the accompanying “Report to Support Derogation Licence Application”, - “The preferred district heating route will cross the River Liffey, via the Liffey Services Tunnel and connects Poolbeg Peninsula to the North Lotts SDZ. The Liffey Services Tunnel is a pre-existing tunnel (circa 300m in length and 2.5m in diameter and has associated launch and reception shafts) that has been installed in advance of the DDHP and will be utilised as part of the development.”

The applicant has provided adequate further information on how potential impacts on the Otter Holt will be mitigated, as indicated on Page 20 of the attached “Report to Support Derogation Licence Application. The applicant gives satisfactory examples of the specific measures to be applied later on Page 20, Section 5-Proposed Mitigation.



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Náisiúnta agus Fiadhúlra
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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 solutions are apparent.

Regional is satisfied with the conclusion of the further information provided, i.e. that the known Holt closest to the works area will be indirect, and that any potential disturbance will not likely affect the conservation status of the species (*Lutra lutra*). Regional is of the opinion that the mitigations supplied in “Report to Support Derogation Licence Application: Section 5-Proposed Mitigation” will be sufficient to maintain the conservation status of the species, and reduce, and minimise, disturbance.

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 can proceed to Test 3]

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



NPWS

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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	☒
	No	☐

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 potential otter holt was identified adjacent to the proposed works. There is no evidence that the holt is a natal holt and it may in fact be currently inactive.

Some temporary short-term disturbance may occur during the works. Nonetheless, the area in question is an area of significant day-time human activity and disturbance. Otters are adaptable and any otters in the general Liffey estuary area must already be accustomed to some level of human disturbance. In addition, Otters are primarily crepuscular (i.e. mostly active at dusk and dawn), and with works proposed during daylight hours, the likelihood of disturbance will be reduced.

Otters in general are in favourable conservation status. With the implementation of the mitigation measures stipulated in Section 5 of the otter report, and the availability of considerable habitat both upstream and downstream of the Proposed Development, it is considered 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 ☐



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The following conditions should be attached to the derogation:

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

[add additional conditions where required]

Kate Greaney

Signed: .

Date: August 28, 2026

Position: Ecologist