



NPWS

An tSeirbhís Páircanna
Náisiúnta agus Fiadhúlra
National Parks and Wildlife
Service

**Derogation Number
DER-OTTER-2025-14**

**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 **Harley Issuer DAC of 32 Molesworth Street, Dublin 2** 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 **Smurfit Papermill, Clonskeagh Road, Clonskeagh, Dublin 6, for Harley Issuer DAC.**
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 (**2025 otter survey at Smurfit Papermills, River Dodder, Clonskeagh, Co. Dublin to inform a section 54 derogation application**), 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 **8th October – 31st December 2025, inclusive.**
6. The works will be supervised by an ecologist **Ross Macklin.**
7. A **follow up pre-construction otter survey** is also recommended prior to the commencement of construction works in advance of the appointment of the contractor
8. 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.
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 **District Conservation Officer – Paul O'Flaherty,** paul.oflaherty@npws.gov.ie, should 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.**



NPWS

An tScribhís Páircí
Náisiúnta agus Fiadhúra
National Parks and Wildlife
Service

For the Minister for Housing, Local Government & Heritage

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

08 October 2025

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



Derogation Assessment

Name of Applicant: **Harley Issuer DAC**

Location/Name of Project: **Smurfit Papermills, Clonskeagh, Dublin 6**

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 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="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 have 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 applicant is relying on the Public health and public safety aspect of Reason C to facilitate the proposed works at the former Smurfit Paper Mills located in Clonskeagh, Co. Dublin. The accompanying report outlines on page 17 that the works are part of the River Dodder Flood alleviation scheme and are essential to remove the risk of flooding and the provision of long-term protection to surrounding properties and infrastructure.

The applicant is also relying on the imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences aspect of Reason C. The applicant has outlined the proposed works will address accommodation shortages in proximity to University College Dublin with the construction of 439 student accommodation bed spaces, 16 new apartments and the renovation of 14 vacant dwellings. It is noted the proposal supports the objectives of the National Planning Framework and the National Development Plan by contributing to local and national housing supply and the delivery of social housing units.

The applicants have provided evidence as to the nature and scale of the public health and public safety reasoning and reasons of overriding public interest including those of a social or economic nature; therefore, 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: Construction of a proposed student accommodation and residential development at the former Smurfit Paper Mills site located in Clonskeagh, Co. Dublin.

The specific situation that needs to be addressed is: During a survey conducted in 2024, otter breeding (holt) and resting areas (couch) were identified as located in close proximity (contiguous) with to the proposed development area.

The alternative solutions suggested by the applicant are:

1. “Do-Nothing” scenario *“Retains high flood risk to surrounding residential and business properties, fails to deliver over 450 new bedspaces/dwellings, and misses the opportunity to integrate fish passage and habitat improvements. Fails to accord with national and local planning policy and environmental protection objectives.”*
 - Regional agrees that the ‘Do-Nothing Scenario’ fails to achieve matters of an overriding public interest. Therefore, the ‘Do-Nothing Scenario’ is not an option.
2. Alternative 1: *“Previous planning permissions on this site included buildings set closer to the river, with a riverside walkway located directly along the bank. In contrast, the current proposal adopts a more environmentally sensitive approach, shaped by the site’s narrow, linear configuration—bounded by the river on one side and established residential development on the other.*
 - Regional disagrees with Alternative 1, as it is likely to cause increased disturbance, in contrast to the ‘Do-Nothing Scenario’ and Alternative 2.
3. Alternative 2: *“a reduced-scale scheme would be unable to fund the significant public-benefit infrastructure proposed, including major flood defence works at Farmer Browns/Clonskeagh Bridge, integrated on-site flood protection, and modifications to the weir to facilitate fish passage.”*
 - Regional agrees with the assertion that a reduced scale scheme would fail to achieve a solution to matters of an overriding public interest.

The applicant has provided satisfactory evidence that alternative solutions have clearly been considered. As outlined on page 19 of the accompanying report a number of alternative solutions, including the “do-nothing alternative” were examined by the applicant. The applicant maintains that *“There is no alternative option but to proceed with the development in the vicinity of the identified breeding and resting areas in light of limited available land take. Although any holt closure has been avoided through the design process, indirect disturbance during the works will be unavoidable.”*

The applicant has also outlined a number of mitigation strategies, which, so long as implemented, greatly reduce any potential for impact on Otters through the course of construction.

Mitigation measures align with best practice guidance for otter (e.g. NPWS, 2021; TII, 2009).

Mitigation measures include:

- A trail camera monitoring program
- Construction activities will be timed to avoid direct disturbance to identified otter breeding and resting sites.
- No-works buffer zones of 150m will be implemented around identified otter holt (breeding) sites and 20m around otter couch (resting) sites (as per TII, 2009)
- Temporary acoustic barriers
- Existing scrub and treeline vegetation along the River Dodder will be preserved
- Retention of the western/ river bank of the Dodder in its current condition as a wildlife refuge
- Human activity in proximity to otter habitat will be minimized to prevent unnecessary disturbance.
- Human activity in proximity to otter habitat will be minimized to prevent unnecessary disturbance.
- The installation of two **artificial otter holts** as part of habitat enhancement for the site (within the wildlife refuge area)
- Ecological Clerk of Works (EcoW) supervision during construction phase
- A **follow up pre-construction otter survey** is also recommended prior to the commencement of construction works in advance of the appointment of the contractor

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 agrees that the proposed works are of an over riding public interest to which there is no apparent alternative, and, given that; the proposed mitigations are appropriate.

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.

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="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):

Otters frequent the section of the Dodder adjacent to this development.
No holt or couch areas will be directly disturbed due to the proposed development. However, short-term, indirect disturbance to otter breeding and resting areas during the construction phase are possible.

Numerous mitigation measures are planned, including minimising future access to the riparian corridor, the installation of sound barriers during construction and the installation of artificial otter holts, and these should help minimise the disturbance to otter.

Providing these measures are implemented I am satisfied that there should be no significant negative impact on the otters in the area.

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]

A handwritten signature in black ink that reads "Kate Greaney". The signature is written in a cursive, flowing style.

Signed: .

Date: October 8, 2025

Position: Ecologist