

Stages in the Site Designation Process¹

Step 1: Identification of sites that may be proposed for designation

Areas that have been or that may be proposed for nature conservation are identified using:

- Previously existing knowledge, such as the list of Areas of Scientific Interest compiled in the 1970s;
- Various publications on important bird areas in Ireland and other surveys;
- The Natural Heritage Area (NHA) survey, carried out from 1991-1994;
- Continuing surveys and site visits by the National Parks & Wildlife Service (NPWS) of the Department of Culture, Heritage and the Gaeltacht; and
- Inputs from Non-Governmental Organisations (NGOs) and professional and amateur ecologists.

In all cases, sites are evaluated by scientific staff within the Department before being proposed for designation. Sites should be at least large enough to provide the physical and semi-natural conditions for the maintenance of a particular habitat and/or species.

Site boundaries

Wherever possible, the boundaries of sites coincide with identifiable (and mappable) features on the ground or with water features. On land, these may be, for example, fences, hedges, ditches or roads. In the case of boundaries at sea or in large lakes, the boundary may be a straight line between visible markers (headlands, islands etc). High and low tide marks are sometimes used.

Natural Heritage Areas (NHAs) – selection criteria

Selection criteria for individual NHA habitat types have encompassed the following:

1. Protection of the site will make a significant contribution to the conservation of one or more species (or other biological type) which are considered vulnerable, rare or endangered in Ireland, or in the Atlantic biogeographical region, or which are covered by any relevant international treaty to which Ireland is a party.
2. Protection of the site will make a significant contribution to the conservation of one or more species which are protected in Ireland under national or international law.
3. Protection of the site will make a significant contribution to the conservation of one or more habitats which are considered vulnerable, rare or endangered, either in Ireland or in western Europe.
4. The site is one of a series selected to represent habitats or ecosystems which are typical of Ireland.
5. The site is one of a series of sites selected to represent a range of variation of habitats which are typical of Ireland.
6. The protection of the site will, in the judgement of the Geological Survey of Ireland, contribute significantly to the conservation of geological, geomorphological or fossil features.

¹ Legal bases: European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) - <http://www.irishstatutebook.ie/2011/en/si/0477.html> and the Wildlife (Amendment) Act, 2000 (No. 38 of 2000) - <http://www.irishstatutebook.ie/eli/2000/act/38/enacted/en/html>

Special Areas of Conservation (SACs) – selection criteria

Sites have been/may be designated as SACs subject to criteria laid out in Annex III of the Habitats Directive². Broadly speaking, these are as follows:

1. The importance within Ireland of the site for its habitats or species.
2. How representative is the example of the relevant habitat present on the site (in practice, this means that a suite of sites is selected which encompasses the range of variation found).
3. How isolated is the population of the relevant species on the site (the more isolated the population, the more likely it is to be genetically different from other populations).
4. The intactness of the habitat on the site.
5. Other factors, including the need to ensure a good geographic spread of sites, the total number of habitats and species listed in the Annex to the Habitats Directive present on the site, whether or not there is a priority habitat (i.e. a habitat in danger of disappearance) on the site and whether or not the site contains habitats or species for which Ireland is especially important.

Special Protection Areas (SPAs) – selection criteria

Sites which meet any of the following criteria have been/may be classified as SPAs under the codified EU Birds Directive³:

1. A site holding 20,000 waterbirds or 10,000 pairs of seabirds.
2. A site holding 1% or more of the all-Ireland population of an Annex I species.
3. A site holding 1% or more of the biogeographical population of a migratory species.
4. A site is one of the 'n' most suitable sites in Ireland for an Annex I species or a migratory species, (where 'n' is a variable which is related to the proportion of the total biogeographic population of a species held by Ireland).

Step 2: Notification of landowners and advertisement of the intention to designate and of the activities requiring consent (ARCs) relating to a site

Where lands are being proposed for designation, each landowner is notified in writing and is sent an information pack on the relevant site. The information pack explains the scientific reasons for the proposed designation and sets out the activities requiring (Ministerial) consent (previously referred to as notifiable actions). A map showing the boundaries and extent of the site is also sent to landowners to help them to determine whether or not their land is located within the proposed designated site.

It is sometimes not possible to identify every landowner. Therefore, in addition to notifying individuals, proposals for NHAs, SACs and SPAs are advertised in local and/or national newspapers and on local or national radio. Notifications are also publicly displayed and maps are made available

² Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora -

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31992L0043&from=EN>

³ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version) - <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0147>

in local NPWS, Department of Employment Affairs and Social Protection, Teagasc/Farm Development Service offices, Garda Stations and public libraries. Sites are legally protected from the time that they are publicly proposed for designation.

A telephone number (1800 405250) is available if further clarification is required from the Designations Unit of the National Parks & Wildlife Service of the Department.

Note about activities requiring consent (ARCs): These are activities that have the potential to damage the wildlife interests of a site. In addition to the list of ARCs, information has been/is provided in the notification on compliance obligations in relation to these. Activities requiring consent were previously referred to as notifiable actions.

Step 3: Assessment of objections/appeals, if any, to the proposed designation and/or to any of the activities requiring consent (ARCs)

A three-month period is allowed by law for lodging an objection to a proposed designation and/or to any of the activities requiring consent.

An objection to a proposed designation and/or to any of the activities requiring consent may be made by any person with an interest in the site (e.g. an owner or legal user). An objection may also be made by a person with an interest in land outside the site which could potentially be affected by the designation and/or any of the ARCs.

An objection to a proposed designation is assessed on scientific grounds only, i.e. whether the relevant habitats/species/geological features are present in such a condition as to warrant designation. The Board also considers the overall scientific basis used for selecting areas for designation as SAC, SPA or NHA.

A case can also be made for the inclusion of an additional area in a proposed designated site.

In both cases, a covering letter accompanied by a map with the relevant area clearly outlined must be lodged within three months of the date of the notification letter or the publication date (whichever is the earliest) of the Minister's proposal.

Objecting to a proposed site designation

There are two stages in the process of objection to the inclusion of land in a proposed designated site:

1st stage: Request for Internal Review

To initiate an internal review, write to or email:

Designations Unit
National Parks & Wildlife Service
Department of Culture, Heritage and the Gaeltacht
7 Ely Place
Dublin 2
D02 TW98

Tel: 01-888 3261

email: objections@chg.gov.ie

An internal review may also be initiated by contacting (e.g. a telephone enquiry) the local NPWS office/Conservation Ranger in the relevant location. Contact details are available at:

<https://www.npws.ie/about-npws/npws-regional-management/npws-regions-and-dco-county>

However, if contact is initiated locally, the objection will still need to be sent in writing or emailed to the above address.

An objection must be made in writing and, where there is a request to have land excluded from the site proposed for designation, be accompanied by a good quality map with the boundary of the area relating to the objection clearly outlined. Telephone/verbal requests will not constitute registration of an objection.

Most objections are dealt with at internal review stage. At internal review, the local Conservation Ranger may arrange a meeting on site to examine the relevant area. Proposed adjustments to boundaries can only be considered on scientific grounds. The outcome of the internal review is issued by letter.

If the internal review is unsuccessful, there is the option to have the case referred to the Designated Areas Appeals Advisory Board (DAAAB) for consideration. The conditions for availing of this option will have been outlined in the letter advising of the outcome of the internal review.

2nd stage: Appeal to the Designated Areas Appeals Advisory Board (DAAAB)

This option is available only where an objection is unsuccessful/partly unsuccessful at internal review. The landowner is informed of the outcome of the internal review and, if relevant, is given the option of having the objection referred to the Designated Areas Appeals Advisory Board. The Board is comprised of an independent chairperson and equal representation of landowners'/users' groups and environmental conservationists.

An appeal for the attention of the Board should be made in writing or by email to the same address as indicated above under 1st stage. If the appellant opts to refer his/her appeal to the Board, both the appellant and the Department are required to produce scientific reports for submission to the Board.

When assessing each appeal, the Board confines itself to consideration of the scientific arguments relating to the specific lands. The Board meets to consider the scientific reports from NPWS/Department and the appellant, together with any respective supplementary reports. The Board makes available each of the parties' expert reports to the other side for their written comment before the Board considers the case. Those written comments are also before the Board.

The appellant is also invited to make a statement, if s/he wishes to do so, in support of the case and before the Board commences its formal consideration of the appeal.

The Board's recommendation is communicated to the Minister. The Minister's decision is then sent to the appellant.

If no objections had been lodged at the expiry of the three months, or on the conclusion of any internal review and/or any appeal to the DAAAB, the site is included on the NPWS list of protected sites, which can be viewed at <https://www.npws.ie/protected-sites>

Objecting to/requesting a review of a Direction on activities requiring consent (ARCs)

An objection to a Direction on ARCs may be made by writing or emailing to the same address as above. In addition, a public authority may request a review or modification of a Direction.

An objection or a request to review a Direction on ARCs may be made even if no objection is being made to the inclusion of land in the related proposed designation and vice-versa.

Step 4: Designation of the site

Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) are collectively known as **NATURA 2000** sites.

Under the terms of the Habitats Directive, Ireland is required to transmit its list of candidate SACs to the European Commission for adoption as sites of Community importance. Transmitted sites are examined by representatives of other member states, independent scientists and representatives of Non-Governmental Organisations (NGOs). The Commission has already adopted 430 Irish sites; this is expected to shortly (Quarter 4, 2017) increase to 439. Following the adoption of sites as sites of Community importance, the designation process is finalised with the production of a Statutory Instrument (S.I.) for each site. Statutory Instruments made to date may be viewed at <http://www.irishstatutebook.ie/eli/statutory.html>. Each Statutory Instrument sets out the Qualifying Interests of the site, i.e. the species and/or habitats for which the site is protected, and the activities requiring consent. Once a site has been formally designated by Statutory Instrument, landowners are notified of the designation. Advertisements relating to the designation are placed in local and/or national newspapers and may be broadcast on local and/or national radio.

SPAs are designated without reference to the EU, although the Commission can and does seek to ensure that the total area designated is adequate within the terms of the codified EU Birds Directive 2009. The designation process for SPAs is completed with the making of a Statutory Instrument for each site.

NHAs have been/are designated by Statutory Instrument under the Wildlife (Amendment) Act, 2000, rather than under legislation transposing EU law.

Appeals against a decision to refuse consent

Affected landowners, occupiers or users who have made an application for consent to carry out certain works which require Ministerial consent and who have been refused may appeal against this refusal within, but not later than, 28 days in the case of SACs and SPAs and 30 days in the case of NHAs after the date of refusal. Details of the appeals process are available from Site Protection Unit of the National Parks & Wildlife Service of the Department (address below).

Compensation Provisions

Landowners, occupiers or users may seek compensation for losses incurred solely as a result of a refusal of consent for an activity on land included in a proposed or designated NHA, SAC or SPA. Applications for compensation can only be considered where an application for consent to carry out an activity has been refused by the Minister and the activity requiring consent has already been in operation on-site for five years prior to the refusal of consent or curtailment of the activity.

The provision of compensation does not automatically apply on designation of a site as a nature conservation area.

Landowners refused consent to carry out an activity or activities on the land by the Minister, have six months to make a claim for compensation following the refusal decision under the European Communities (Bird and Natural Habitats) Regulations 2011 for SAC or SPA sites or under the Wildlife Acts for NHA sites.

In respect of refusals to carry out works which require Ministerial consent within SACs and SPAs, where an application to appeal this decision has been submitted the timeframe for application for compensation is within six months of the decision on that appeal. Please note this provision does not apply in respect of applications relating to NHAs.

Details should be provided of the actual losses incurred as a result of the refusal of consent and the

applicant should outline the basis for the calculations.

Documentary evidence of past earnings and the activities that produced these should also be included with the claim.

The material will be examined and, if appropriate, an offer of compensation will issue in due course.

An application for compensation must be made in writing and submitted within the prescribed timeframes as outlined above to:

Site Protection Unit
National Parks & Wildlife Service
Department of Culture, Heritage and the Gaeltacht
Newtown Road
Wexford
Y35 AP90

Tel: 053-911 7310

email: designated.bogs@chg.gov.ie

Where the amount of compensation, if any, is in dispute, the applicant can apply to the High Court for the appointment of an arbitrator. It should be noted that, in relation to deciding on questions of compensation, the arbitrator will have the power to award costs against either or both parties.

**Peatland Issues and Land Designation Section
National Parks & Wildlife Service
Department of Culture, Heritage and the Gaeltacht
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