

Agreement between the Government and Farming Organisations on Review of Implementation of the Habitats Regulations 1997

Introduction

In the 2003 *Sustaining Progress* Partnership Agreement, it was decided that the Government would review all aspects of the European Communities (Natural Habitats) Regulations 1997, under which Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) are designated.

Following discussions over many months which included two meetings with the Minister for the Environment, Heritage and Local Government, Mr Martin Cullen TD and a number of meetings at official level, the farm organisations and the Department of the Environment, Heritage and Local Government have reached the following agreement in relation to the future operation of the designation system, and the Regulations will be amended, where necessary, to give effect to it.

In these discussions, both sides have acknowledged the crucial role which farmers have played and will continue to play in conserving nature and maintaining a high quality rural environment.

The implementation of this agreement will be subject to ongoing monitoring by the farm organisations and the Department with a view to resolving, in a constructive manner, any difficulties which may emerge.

The Designation Process

1. The process of designating sites for nature conservation as SACs, SPAs and NHAs is now well advanced, and for SACs in particular is close to completion. It should:
 - Be brought to completion as speedily as possible, while having full regard to the need for consultation with land owners and users, in order to meet legal obligations and to remove uncertainty for land owners and users;
 - Include areas additional to those already proposed or designated, only to the extent strictly necessary to provide for conservation of habitats, populations of species and geological features warranting protection under international or national legislation.

In relation to the latter point, the detailed information provided by the Department (appended to this document as a Supplementary Note) sets out the full extent of what is involved in completing the designation process so that all conservation requirements will have been met.

Notification, Appeals and Liaison with Farmers

2. Where lands are being proposed for designation or are being designated on foot of earlier proposals, the individual farmer/landowner will be notified in writing by the Department, except in the case where he or she remains unknown after every effort has been made. The Department will ensure that written notifications are as user-friendly as possible. The scientific reasons for the designation will be fully explained to the farmer as will the prescribed farming conditions and restrictions that will apply. Follow-up visits will be arranged where requested by the farmer, which will facilitate a more detailed discussion of the specific habitats and prescriptions as they apply to the individual farm.
3. Designated areas can only be successfully conserved with the active involvement of their owners. The key to achieving this is co-operation not confrontation. In this context Rangers

and other NPW staff and contractors who are empowered to enter lands under the Wildlife Acts will at all times make every effort to contact landowners before doing so and to visit farms at mutually convenient times. D/EHLG will, in consultation with the Farm Organisations, develop a Code of Practice on contact with landowners, and a Working Group will be set up immediately to progress this. Local staff contact details will always be included in notifications regarding designated areas.

- 4 A farmer/landowner may appeal the designation with the local officer on the ground. If the outcome is not satisfactory to the farmer/landowner, an appeal may then be made to the Designated Areas Appeals Advisory Board. At this stage it is not envisaged that the Board will be put on a statutory footing, but the farm organisations will review this with the Department one year from the date of this agreement. Both sides acknowledge the success of the Board in its present format. Guidelines to the Board will include a methodology for reducing the timeframe within which appeals are being heard. In relation to notifiable actions, farmers will continue to have a statutory right of appeal to an independent arbitrator.
- 5 NPWS is preparing draft conservation plans for every SAC, SPA and will in future produce them for NHAs. Once an initial draft is prepared it will be brought to consultation with landowners as well as other interested parties. Consultation is achieved mainly through liaison committees (if available), clinic style meetings and one to one meetings, with the priority given to the inputs from landowners.
- 6 The Department will update and re-publish "Nature on the Farm", an advisory booklet on maintaining and improving wildlife habitat on the farm. If there are any significant changes, these will be discussed with the farming organisations. It will be made clear that in most cases designation does not necessitate any restriction on existing activities. Cleaning of existing drains within designated areas is not a notifiable action.

River and lake margins

- 7 The Farming organisations support the need for Good Farming Practice along rivers, and acknowledge the obligation to protect SAC rivers from activities which could damage the river habitats and species, whether taking place inside or outside the designated areas.
- 8 The Department will implement a revised approach to designation of marginal areas along rivers.
 - (a) The revised SAC will include bank-side only to 2.5 meters from the river bank. If embankments or other features are present which will curtail direct runoff, the margin can be further reduced accordingly. Where special features are present, e.g. associated wildlife habitat or floodplain (see appendix 1 for more detail about floodplains), they will continue to be included.
 - (b) Within the 2.5 meter area, Notifiable Activities will not restrict, or require consultation on, activities covered by Good Farming Practice: (Department of Agriculture, Food and Rural Development, 2001)
 - (c) The SAC regulations will be amended to allow for notification, where necessary, of riverside landowners of actions outside the SAC which could damage the special interest of the SAC. Notifiable Activities will not restrict, or require consultation on, activities covered by Good Farming Practice: (Department of Agriculture, Food and Rural Development, 2001)
 - (d) The net effect of this change will be to
 - enormously reduce the area affected by the designation,
 - clarify the issues of notifiable actions and
 - reduce greatly the need for landowners to consult NPW staff.
- 9 The Department has set out (Appendix 2) why a different approach is taken to lakes than

rivers, which in some circumstances requires designation of a greater margin beside lakes. The SAC boundary around a lake is mapped to provide protection to the lake and any associated wetlands or other biologically rich habitats. Where the adjacent land is itself a wetland, forming a buffer to the lake, which is the case along many lakeshores, the nearest feature encompassing the wetland is taken as the boundary. Whether any "green land" is included within the boundary depends on the characteristics of the lake system. Such land is not included around lakes which are naturally nutrient rich, such as Lough Oughter. Green land is only included as part of the lake system where it is established by scientific evidence that it is necessary for the protection of smaller or low nutrient status lakes. In these cases, the site boundary may extend 50 metres from the high water mark of the lake and extend to the first physical feature. If the nearest feature e.g. a hedge or fence, is somewhat less than 50m away it is used as the boundary.

In this context, concerns about boundaries of lake SACs are well suited to determination on a case by case basis. NPWS is prepared to discuss and reach agreement to adjust a boundary to a physical feature less than 50m from the high water mark if it would act as a barrier between land-based activities and the lake. Such features may include crests or ridges. NPWS is also prepared, where boundaries extend beyond 50m, to reduce the area designated if the landowner agrees to put down permanent markers. The type of marker, and payment for erection, can be agreed locally.

Designation of lakes and their shorelines is not a reason for restricting provision of access by landowners to lakes in a traditional manner for boating and non-commercial activities.

Implications for development

- 10 The Minister will inform Local Authorities, with copies to all Councillors, that designation is not intended to operate as an inflexible constraint on development. He will advise them that the approach to dealing with planning applications for rural housing which might have implications for nature conservation or the natural heritage, as detailed in the draft Planning Guidelines on Sustainable Rural Housing published on 4 March 2004, should also be used in relation to applications for other types of development so as to allow sustainable rural development while maintaining designated areas at a favourable conservation status. The importance of consistency between Local Authorities will be emphasised.
- 11 The Department also agrees that there should not be an automatic blanket prohibition on afforestation in SACs, SPAs or NHAs, and this is now the practice in the Forest Service when considering applications. Nor should there be an automatic blanket prohibition on windfarms in these areas.
- 12 Prior to publication of proposed SPAs for Hen Harrier, there will be further consultations with the farming organisations about the extent of these areas and their implications for windfarming and forestry.

Implications for access

- 13 Designation of lands or waters as SACs, SPAs, or NHAs does not in any circumstances create rights of way, rights of access for third parties or public access.

Compensation

- 14 Where designations are proceeding, the Department agrees that a fair and proper level of compensation shall be paid for any costs or losses of income or value which result from restrictions on farming or other existing activities.

Income losses or costs

- 15 A National Scheme of compensation is available. Detailed implementation arrangements will be discussed with the farm organisations. Standard rates of compensation will be agreed where possible, calculated to provide reasonable support for landowners in implementing measures required to conserve particular habitats and species, and having regard to all compliance costs, but an individual who does not wish to accept these rates will still have the option of individually costed compensation based on his/her own farm. When standard rates are agreed, a basis for reviewing and adjusting the rate to reflect changes in costs and values will also be agreed. Informal arbitration processes will be used, where possible, to resolve disagreements.
- 16 The Department of Agriculture & Food will continue to consult with the Farm Organisations on the implications of the Single Payment Scheme for the level of payment under REPS Measure A. Both Departments are continuing to explore all options to resolve issues concerning levels of payment to farmers in the Shannon callows to the satisfaction of all concerned. The Department of Agriculture & Food agrees that specific issues relating to the Shannon Callows can be included in consultations with the farming organisations relating to REPS Measure A.
- 17 In the event that it is established that genuine hardship has arisen in individual cases from income losses, specifically on foot of designations, in circumstances not covered by this agreement, the Department will enter into discussions with the farm organisations to address the issue.

Turf cutting

- 18 The compensation levels for turf cutting restrictions have been revised. The new rates are set out in Appendix 3. Where a farmer/landowner does not agree with the standard compensation, recourse to arbitration will be available.

Capital

- 19 Capital compensation for a loss in land value will be payable to the extent that it arises from restrictions on farming or another existing land use, and to the extent that it is not covered by ongoing compensation for income loss or extra costs. The compensation payable will be the difference between the pre-designation value and the post-designation value. In the event of disagreement on the amount of such compensation, there will be recourse to arbitration.

Future funding possibilities

- 20 Future EU policy developments on the funding of rural development and nature conservation will be discussed with the Farming Organisations with a view to enhancing the range of measures and incentives available to farmers and landowners for retaining and managing habitats on their lands.

Appendix 1.

DEFINITION OF A FLOODPLAIN

The floodplain may be defined as **the area of land along the river which would be expected to flood for a period at some time in the course of a normal year.** The Department will use the best and most up-to-date information available in this regard.

Restrictions to be applied in floodplains in general:

In accordance with Good Farming Practice, there should be no spreading of slurry/organic manure within 20m of the river channel.

Current farming activities can continue without notification unless they involve any of the following, which, as they may impact upon habitats, are notifiable actions (that is actions which would require consultation and consent in advance):

- Reclamation, infilling or drainage (other than cleaning of drains)* within 5 m of the river bank.
- Removal of trees; reseeded of lands where this has not been practiced for 10 years or more; or afforestation.
- Ploughing or use of any pesticides where this has not been practiced for 10 years or more.
- Any use of pesticides (herbicide or pesticide) within 5m of the river bank.
- Intensification of current farming activity.
- Alteration of the banks, channel, bed or flow of the river.

*Cleaning of existing drains within SACs is not a notifiable action.

Appendix 2.**LAKE MARGINS AND SAC DESIGNATION****Why is the approach different between rivers and lakes?**

Lakes and turloughs differ from rivers in that water moves through them very slowly. Rivers flush themselves through in days, whereas lakes and turloughs take months or even years. Therefore any impacts of activities on the land are more direct and longer-lasting than on rivers. This is especially important on very clean lakes and small lakes and turloughs.

Lakes can and do act like sumps for nutrients. In lakes, the water stops mixing during spells of still weather, often in summer. In such conditions, over-enrichment through fertiliser run-off, or from other sources, can lead to serious loss of oxygen which may wipe out many species.

Lake shore vegetation plays an important role in maintaining the balance of plankton and the entire food chain. The vegetation is susceptible to change through run-off from surrounding land. The structure and function of wetlands at the lake edge are susceptible to change and damage by drainage activities in the lake margin.

Appendix 3.**COMPENSATION FOR CESSATION OF TURFCUTTING.****Compensation for cessation of turf-cutting in SACs and NHAs****Revised Proposals****Purchase of raised bogs:**

Purchase of freehold: €3,500 for the first acre(or part thereof) and €3,000 per acre thereafter

Purchase of turbary rights only: 85% of freehold as at present

The above rates will apply to all purchases from the date of this agreement. In addition they will be applied retrospectively (by means of an additional ex-gratia payment) in respect of any earlier purchases of raised bogs included in the December 2002 designation proposals.

Purchase of blanket bogs:

In general the purchase of Blanket Bogs is not envisaged. In exceptional circumstances, where it is necessary to prohibit turf-cutting €1,000 per acre will apply.

Contributions to legal costs

As per present arrangements(insert table of NPWS contribution)

Additional incentive payment:

The following applies in the case of Raised Bogs and also applies where it is necessary to prohibit turf-cutting in Blanket Bogs

Save in exceptional circumstances, people will be allowed to continue domestic cutting on their plots for up to 10 years. In this context, the following will be available:

- A payment of €600 per annum for the remaining period for which people give up the right to continue cutting, while others are continuing to cut
- Paid as a single sum, up front
- Those who sell bog/turbary before end of 2005, get €6,000 (on top of purchase price)
- Declining by €600 per annum
- This payment shall only apply to a vendor supplying satisfactory evidence of ownership of the plot as at 1st July, 2004
- For bogs designated prior to 1999 this payment will be applied retrospectively to those who have sold bogs/turbary. This relates to the period 1999-2008 and the IR£1,000(€1,270) incentive payment where already paid will be deducted.

A landowner who does not wish to sell bog/turbary but who commits to cease cutting and to allow drain-blocking will also be entitled to a payment of €600 per annum. This rate of payment will be reviewed annually.

After the 10-year period the Department will review whether there are particular circumstances in which domestic turf-cutting can continue on raised bogs without damaging the bogs.

SUPPLEMENTARY NOTE

DESIGNATIONS - FUTURE PROPOSALS

1. Special Areas of Conservation

Ireland has completed its proposals for designation of SACs, subject only to the following:

Land and freshwater SACs

Proposals have now been evaluated by the Commission and accepted as almost complete. Most of the few outstanding requirements relate to further listing of habitats and species within existing sites, but a few extensions of existing sites will be required, in particular the inclusion of further stretches of smaller rivers where salmon spawn.

Marine SACs

Proposals from all member states have still to be evaluated. EU evaluation could lead to requirements for a few more sites, but these are likely to relate to offshore habitats (e.g. sandbanks) rather than intertidal coastal habitats. We have yet to propose marine sites in the exclusive economic zone beyond the 12-mile limit (for deep-water corals etc.).

Modification of boundaries of existing sites

To ensure that boundaries are fully justifiable scientifically, modifications would involve both inclusions and exclusions, generated from appeals and from improved survey knowledge.

A list of candidate SACs for the Atlantic region of Europe is expected to be adopted in 2004. The Minister will be obliged to proceed thereafter to the final stage of designation of the sites as SACs. The procedures provide for notification of landowners.

2. Special Protection Areas

Sites for dispersed species:

Ireland is still required to designate sites for certain dispersed species, in particular hen harrier and chough. The extent of the harrier designation cannot be finalised until information on the current extent of forest planting is available from the Forest Service. NPWS is committed, when this information has been assessed, to further consultation with landowners' representatives in relation to the proposals before they are finalised. Designations for chough will not go beyond 4 coastal areas and inland cliff areas of Kerry and west Cork and one in Donegal. NPWS will discuss these proposals and their implications also with landowners' representatives.

Certain other dispersed species also require designation of sites. For species such as merlin and kingfisher this can be contained on lands / waters already designated. For species such as red-throated diver and corncrake, designation is likely of a small number (perhaps 5 each) of small areas (i.e. less than 100 ha).

Sites for concentrated populations of waterfowl, waders and seabirds:

5 additional areas for Greenland White fronted Goose are required. These will be extensions of existing designated areas. In addition, designation of further areas of foreshore, cliff and offshore areas for seabirds are required. This will have minimal impact on landowners.

On foot of a Reasoned Opinion on the Birds Directive, and therefore under threat of European Court proceedings, Ireland has made commitments:

- to designate shortly some 35 Special Protection Areas, previously advertised in March 2002 (almost all non-controversial wetland and seabird sites). Statutory Orders are in preparation.
- to notify landowners, where applicable, in respect of about 100 SPAs during the second half

of 2004. These are all previously designated SPAs, mainly on State lands and waters, but there is a need to ensure that any private landowners have been properly notified, before re-designation.

3. Natural Heritage Areas

Raised Bogs

As part of arrangements to give effect to the ECJ judgement against Ireland in relation to sub-threshold EIA we are under continuing legal pressure from the Commission, with threat of fines, to complete implementation of these arrangements. 75 raised bog NHAs were formally published and notified under the Wildlife (Amendment) Act, 2000 in December 2002. Arrangements for statutory designation of sites are proceeding. 58 statutory orders have been signed. The remaining 17 statutory orders will be prepared as soon as appeals are dealt with and this will complete the Department's proposals for designation of raised bogs.

Blanket Bogs

Again, under pressure from the EU Commission, in relation to the need to provide for sub-threshold EIA of peat extraction at sensitive sites, we are currently reviewing blanket bogs sites which may warrant designation as NHAs, with a view to statutory proposal of relevant sites in the second half of 2004. 73 sites, comprising 37,394 hectares, most of which were previously published as non-statutory pNHAs in 1995, will go forward for statutory designation.

Biological/Ecological Sites

Apart from the raised and blanket bogs, there are about 630 proposed NHAs covering approximately 100,000 ha, which were published on a non-statutory basis in 1995, which have not since been statutorily proposed or designated as SACs, SPAs or NHAs. DEHLG intend to define criteria for NHA selection and review the 1995 pNHAs and any other known sites which may meet the criteria. Proposals will then be prepared for statutory designation as NHAs of sites which measure up to the criteria.

Geological Sites

The Geological Survey of Ireland is also preparing a list of geological / geomorphological sites to be proposed to D/EHLG for designation as NHAs. This work is not complete. Larger sites are likely to overlap substantially with ecological sites, e.g. limestone pavement, eskers, and in such cases will not involve additional restrictions as the sole purpose will be to conserve the geological feature. Most smaller sites, for fossils etc., will be in rock outcrops exposed along the coast or elsewhere, and are unlikely to have any implications for agricultural land use. Further consultation with the farm organisations will take place as the areas being considered for designation become available.