



STATUTORY INSTRUMENTS.

S.I. No. 175 of 2019



EUROPEAN UNION CONSERVATION OF WILD BIRDS (TRALEE BAY
COMPLEX SPECIAL PROTECTION AREA 004188) REGULATIONS 2019

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I, JOSEPHA MADIGAN, Minister for Culture, Heritage and the Gaeltacht, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Directive 2009/147/EC¹ hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union Conservation of Wild Birds (Tralee Bay Complex Special Protection Area 004188) Regulations 2019.

Interpretation

2. (1) In these Regulations -

“Directive” means the Birds Directive within the meaning of the Regulations of 2011;

“Minister” means Minister for Culture, Heritage and the Gaeltacht;

“Regulations of 2011” means European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011);

“Regulations of 1985” means European Communities (Conservation of Wild Birds) Regulations 1985 (S.I. No. 291 of 1985);

“Special Protection Area” means the area classified under Regulation 3 as a Special Protection Area.

(2) In these Regulations a word or expression that is used in these Regulations and is also used -

(a) in the Regulations of 2011 shall, unless the contrary intention is expressed, have in these Regulations the meaning that it has in the Regulations of 2011, or

(b) in the Directive shall, unless the contrary intention is expressed, have in these Regulations the meaning that it has in the Directive.

Classification of Special Protection Area

3. (1) Having taken account of the matters referred to in Article 4 of the Directive, the area identified by reference to the map contained in Schedule 1 and further referred to in Schedule 2 is classified as a Special Protection Area, in accordance with Article 4 of the Directive, in order to ensure the survival

¹ OJ No. L 20, 26.1.2010, p. 7

and reproduction of species to which Article 4 of the Directive relates, including in particular the species specified in Schedule 3.

(2) The Minister shall, in accordance with the Regulations of 2011, establish and publish conservation objectives in respect of the Special Protection Area classified under these Regulations with regard to the special conservation interests of the species specified in Schedule 3.

(3) Particular attention shall be paid to the protection of the wetlands included in the area identified in Schedules 1 and 2.

Matters relating to maps

4. (1) (a) The indicative map contained in Schedule 1 showing the boundary of the Special Protection Area shall be drawn to such convenient scale as the Minister thinks fit and sealed and shall be deposited in the offices of the Minister.

(b) The Minister may prepare more detailed maps, in such convenient number of separate sheets as the Minister thinks fit, showing the boundary of the Special Protection Area and shall seal each of the maps and shall deposit them in the offices of the Minister.

(c) Any dispute involving the boundaries of the Special Protection Area shall be determined by reference to maps prepared under this subsection in relation to the area.

(2) (a) A map referred to in paragraph (1) when so deposited in the offices of the Minister shall be retained in such offices and the map, or a true copy of it, shall be open for inspection free of charge in such offices by any person at any time at which the offices are open for the transaction of public business.

(b) The Minister may cause to be prepared and supplied to any person so requesting a true copy of a map deposited with the Minister under paragraph (1)(a) or (b) or any particular part or sheet of it and to charge for such copy such sum to cover administrative costs as the Minister decides.

Activities requiring consent

5. (1) Subject to paragraph (2), a person shall not carry out, cause or permit to be carried out or continue to carry out, or assist in carrying out, any activity specified in Schedule 4 within the Special Protection Area except with, and in accordance with, consent given by the Minister under Regulation 30 of the Regulations of 2011, upon application in writing to the Minister to carry out the activity.

(2) There is no requirement upon a person to obtain the consent of the Minister under paragraph (1) where a proposed activity or continued activity referred to in that paragraph -

- (a) is one that requires consent or consents under one or more of the enactments set out in the Second Schedule to the Regulations of 2011 or under the Planning and Development Acts 2000 to 2015 and the activity is carried out with and in compliance with such consent or consents,
- (b) is part of a project that has received consent under one or more of the enactments set out in the Second Schedule to the Regulations of 2011 or under the Planning and Development Acts 2000 to 2015 and the project or activity is carried out with and in compliance with a consent or consents given under the applicable statutes,
- (c) is part of a project that has received consent under one or more regulations made under the European Communities Act 1972 or under one or more regulations made under any of the enactments set out in the Second Schedule to the Regulations of 2011 and the project or activity is carried out with and in compliance with such consent, or
- (d) has been authorised as part of an agreed farm or land management plan.

(3) A person affected by a decision to refuse to give consent, to attach or vary conditions or revoke a consent under Regulation 30 of the Regulations of 2011, in respect of an activity referred to in paragraph (1), may appeal the decision under Regulation 37 (3) of the Regulations of 2011.

Offence and proceedings

6. (1) A person who carries out, causes or permits to be carried out, or assists in the carrying out of an activity referred to in Regulation 5(1), without a consent or otherwise than in accordance with a consent given by the Minister under Regulation 30 of the Regulations of 2011, commits an offence and is liable -

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years, or both.

(2) In imposing a penalty under paragraph (1), the court shall, in particular, have regard to the risk or extent of injury to the environment arising from the act constituting the offence.

(3) Proceedings for an offence under paragraph (1) may be brought summarily by -

- (a) the Minister,
- (b) the public authority concerned, or

- (c) a member of the Garda Síochána, in accordance with section 8 of the Garda Síochána Act 2005.

(4) Any fine in respect of an offence prosecuted summarily by a public authority shall be paid to that public authority.

Offence - body corporate

7. (1) Where an offence under Regulation 6 is committed by a body corporate and is proven to have been so committed with the consent, connivance or approval of or to have been attributable to the wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, commits an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Costs of prosecutions

8. Where a person is convicted of an offence under Regulation 6, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the prosecutor the costs and expenses, measured by the court, incurred by the prosecutor or other person in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the taking of samples and the carrying out of tests, examinations and analyses.

Authorised officers

9. A person appointed as an authorised officer under Regulation 4 of the Regulations of 2011 may, for the purposes of ensuring compliance with these Regulations, exercise the powers of an authorised officer under Part 2 of the Regulations of 2011.

Revocation

10. (1) The Schedule to the Regulations of 1985 is amended by the deletion of -

- (a) paragraph 11 (inserted by Regulation 2 of the European Communities (Conservation of Wild Birds) (Amendment) Regulations 1986 (S.I. No. 48 of 1986)), and



- (b) paragraph 68 (inserted by Regulation 2 of the European Communities (Conservation of Wild Birds) (Amendment) Regulations 1996 (S.I. No. 269 of 1996)).

(2) Notwithstanding paragraph (1)-

- (a) any civil or criminal proceedings brought under the Regulations of 1985, insofar as the paragraphs deleted by paragraph (1) are concerned, may be continued as if they had been brought under these Regulations,
- (b) any document, notice, decision, act or thing issued, made or done by the Minister under the Regulations of 1985, insofar as the paragraphs deleted by paragraph (1) are concerned, shall continue to have full force and effect on and after the commencement of these Regulations, and
- (c) any act, decision or other thing commenced but not completed by the Minister under the Regulations of 1985, insofar as the paragraphs deleted by paragraph (1) are concerned, may be continued and completed by the Minister under these Regulations.

Sceideal 1 / Schedule 1

LIMISTÉAR FAOI CHOSAINT SPEISIALTA SPECIAL PROTECTION AREA

-  Limistéar faoi Chosaint Speisialta
Special Protection Area
-  Rialachán 4(1)(b) Innéacs Mapa Mionsonraithe
Regulation 4(1)(b) Detail Map Index

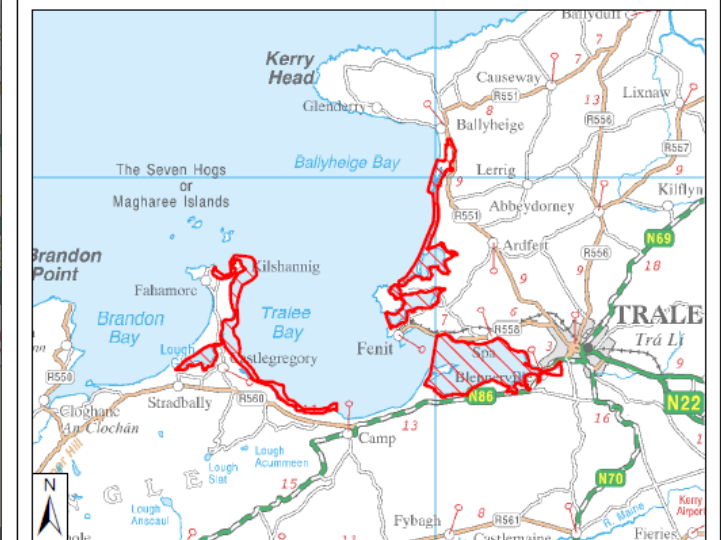
LCS Choimpléasc Bhá Thrá Lí Tralee Bay Complex SPA

004188

Achar / Area 3,655.61 ha



Co. Chiarraí
Co. Kerry



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Schedule 2

Regulation 3

Description of area classified as a Special Protection Area

The area known as Tralee Bay Complex Special Protection Area 004188 is situated in the county of Kerry being the land and waters enclosed on the map (contained in Schedule 1) within the inner margin of the red line and hatched in red and is situated in whole or in part in the townlands of Annagh (E.D. Blennerville), Aughacasla North, Aughacasla South, Ballingowan (E.D. Castlegregory), Ballinprior, Ballyard, Ballydunlea, Ballyea, Ballygarran, Ballymacquin Lower, Ballymacquin Upper, Ballymakegoge, Ballyvelly, Banna-mountain, Barrack, Barrow, Buncurrig, Cappaclogh East, Cappaclogh West, Carrahane Lower, Carrahane Upper, Carrigaha, Castlegregory, Cloosguire, Commons (E.D. Banna), Curragraigue (E.D. Blennerville), Curraheen (E.D. Baurtregaum), Deelis (E.D. Deelis), Derrymore East, Derrymore West, Fahamore, Farrantoolen, Fenit Within, Fenit Without, Kerries East, Kerries West, Kilfenora, Kill (E.D. Banna), Killiney, Kilshannig, Knockanush West, Lisnagree, Lissodeige, Lohercannan, Lough Gill (E.D. Castlegregory), Lough Gill (E.D. Stradbally), Loughbeg, Magherabeg, Rahoneen, Tawlaght (Ballynahaglish Ph), Tonavane and Tullaree.

Schedule 3

Regulation 3

Bird Species protected under Article 4(1) and (2) of the Directive

Common Name	Scientific Name
Whooper Swan	<i>Cygnus cygnus</i>
Light-bellied Brent Goose	<i>Branta bernicla hrota</i>
Shelduck	<i>Tadorna tadorna</i>
Wigeon	<i>Anas penelope</i>
Teal	<i>Anas crecca</i>
Mallard	<i>Anas platyrhynchos</i>
Pintail	<i>Anas acuta</i>
Scaup	<i>Aythya marila</i>

Oystercatcher	<i>Haematopus ostralegus</i>
Ringed Plover	<i>Charadrius hiaticula</i>
Golden Plover	<i>Pluvialis apricaria</i>
Grey Plover	<i>Pluvialis squatarola</i>
Lapwing	<i>Vanellus vanellus</i>
Sanderling	<i>Calidris alba</i>
Dunlin	<i>Calidris alpina</i>
Black-tailed Godwit	<i>Limosa limosa</i>
Bar-tailed Godwit	<i>Limosa lapponica</i>
Curlew	<i>Numenius arquata</i>
Redshank	<i>Tringa totanus</i>
Turnstone	<i>Arenaria interpres</i>
Black-headed Gull	<i>Chroicocephalus ridibundus</i>
Common Gull	<i>Larus canus</i>

Schedule 4

Regulation 5

Activities requiring consent of Minister

ARC Code	Description
ARC 01	Reclamation, including infilling.
ARC 03	Blasting, drilling, dredging or otherwise removing or disturbing fossils, rock, minerals, mud, sand, gravel or other sediment.
ARC 06	Introduction, or re-introduction, of plants or animals not found in the area. [Consent is not required for the planting of crops on established reseeded grassland or cultivated land.]
ARC 09	Construction or alteration of tracks, paths, roads, bridges, culverts or access routes.

- ARC 15 Burning, topping, clearing scrub or rough vegetation or reseeded. [Consent is not required for these activities on established reseeded grassland or cultivated land provided it is greater than 20m from a river, stream or floodplain; or greater than 50m from a wetland, lake, turlough or pond.]
- ARC 25 Drainage works including digging, deepening, widening or blocking a drain, watercourse or waterbody.
- ARC 29 Planting of trees or multi-annual bioenergy crops.
- ARC 30 Any activity intended to disturb birds, including by mechanical, air, gas, wind powered or audible means
- ARC 31 Developing or consenting to the development or operation of commercial recreational/visitor facilities or organised recreational activities.
- ARC 36 Harvesting marine invertebrate species in intertidal areas.
- ARC 37 Driving mechanically propelled vehicles in intertidal areas, except over prescribed access routes.



GIVEN under my Official Seal,
18 April, 2019.

JOSEPHA MADIGAN,
Minister for Culture, Heritage and the Gaeltacht.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

Directive 2009/147/EC (O.J. L 20/7 of 26 January 2010) of the European Parliament and of the Council of 30 November 2009 (“the Birds Directive”) on the conservation of wild birds provides for the conservation of wild birds by, among other things, classifying important ornithological sites as Special Protection Areas.

The hyperlink

http://ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm which connects to the European Commission Environment (Nature and Biodiversity) website also contains a further link to the text of the Birds Directive.

The effect of these Regulations is to classify a site as a Special Protection Area in accordance with Article 4 of the Birds Directive.

The geographical area of the Special Protection Area classified by these Regulations is delineated and defined in Schedule 1 (a map or maps of the area) and Schedule 2 (a list of the townlands in question / a description of the area) of these Regulations.

For more detailed maps than those contained in Schedule 1, or for greater detail on boundary delineation, please contact the National Parks and Wildlife Service of the Department of Culture, Heritage and the Gaeltacht or by viewing the relevant text or map details on <http://www.npws.ie>

The bird species cited in Schedule 3 of these Regulations are specified, in accordance with the Directive, in order to ensure their survival and reproduction in their area of distribution.

Those activities requiring the consent of the Minister listed at Schedule 4 to these Regulations are cited for their potential to cause disturbance or damage to the bird species, specified in Schedule 3 of these Regulations or are cited because of the potential damage such activities may cause to the habitats of such bird species.

Landowners, occupiers of lands, users of land or any person proposing to carry out any such activity requiring consent must contact the local National Parks and Wildlife Service office of the Department of Culture, Heritage and the Gaeltacht before undertaking any of the activities listed at Schedule 4. (See www.npws.ie for contact details). It is necessary to obtain the consent of the Minister, or have the consent of another public authority as outlined in regulation 5 (2) of these Regulations, to lawfully carry out any such activity.

Please note that activities other than those listed at Schedule 4 to these Regulations, such as effluent discharge, construction work, aquaculture or fishing require a licence or permission from the appropriate consent authority.

Public authorities must have regard to the conservation objectives of the Special Protection Area when undertaking screening or appropriate assessment of plans or projects in accordance with the EU Habitats Directive.

Please also note regulation 6 of these Regulations which makes it an offence to carry out, cause or permit to be carried out, or assist in the carrying out of an activity requiring consent without the consent of the Minister or to carry out such an activity otherwise than in accordance with such consent.

Regulation 6 of these Regulations also provides for the penalties that may be imposed by the court in respect of a conviction of any such offence under these Regulations.

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