



STATUTORY INSTRUMENTS.

S.I. No. 346 of 2021



EUROPEAN UNION HABITATS (SPAHILL AND CLOMANTAGH HILL
SPECIAL AREA OF CONSERVATION 000849) REGULATIONS 2021

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I, DARRAGH O'BRIEN, Minister for Housing, Local Government and Heritage, 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/EC^[1] hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union Habitats (Spahill and Clomantagh Hill Special Area of Conservation 000849) Regulations 2021.

Interpretation

2. (1) In these Regulations -

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

“Minister” means Minister for Housing, Local Government and Heritage;

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

“Special Area of Conservation” means the area designated under Regulation 3 as a Special Area of Conservation.

(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.

Designation of Special Area of Conservation

3. (1) Having taken account of the matters referred to in Article 4 of the Directive and having been adopted by the European Commission in accordance with the procedure laid down in Article 4(2) of the Directive, the area identified by reference to the map contained in Schedule 1 and further referred to in Schedule 2 is designated as a Special Area of Conservation, in accordance

^[1] OJ No. L 20, 26.1.2010, p. 7

with Article 4(4) of the Directive, in order to ensure the protection of natural habitats and species in Annex I and II to the Directive, including in particular the natural habitat type and animal and plant species specified in Schedule 3.

(2) The Minister shall, in accordance with the Regulations of 2011, establish and publish such particular conservation objectives as he or she, from time to time, considers necessary for the Special Area of Conservation with regard to the natural habitat type and animal and plant species specified in Schedule 3.

Matters relating to maps

4. (1)(a) The indicative map contained in Schedule 1 showing the boundary of the Special Area of Conservation 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 Area of Conservation 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 Area of Conservation 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 Area of Conservation 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 for the purposes of ensuring compliance with these Regulations may exercise the powers of an authorised officer under Part 2 of the Regulations of 2011.

Schedule 2*Regulation 3***Description of area designated as a Special Area of Conservation**

The area known as Spahill and Clomantagh Hill Special Area of Conservation 000849 is situated in the county of Kilkenny 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 Balief Upper, Ballyspellan, Clomantagh (Mountgarret), Creenkill Beg, Creenkill More, Frankford or Ballykieran, Killoshulan, Knockdav, Rathlogan and Sevensisters.

Schedule 3*Regulation 3***Natural habitat type and animal and plant species lists****Natural Habitat Type**

In this list the sign [] indicates a priority habitat type as defined in the Directive.*

Natura 2000 Code Description

| | |
|------|--|
| 6210 | Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco Brometalia) (* important orchid sites)* |
|------|--|

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 05 | Cutting, uprooting or otherwise removing plants. [Consent is not required for harvesting of cultivated crops, or for grazing or mowing.] |
| 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 10 Construction, removal or alteration of fences, stone walls, hedgerows, banks or any field boundary other than temporary electric fencing. [Consent is not required for normal maintenance.]
- ARC 11 Digging, ploughing, harrowing or otherwise disturbing soil or substrate. [Consent is not required for these activities on established reseeded grassland or cultivated land provided it is greater than 50m from a river, stream, floodplain, wetland, lake, turlough or pond.]
- ARC 12 Applying inorganic or organic fertiliser, including slurry and farmyard manure. [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 13 Applying lime. [Consent is not required for this activity 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 14 Storage, burial, disposal or recovery of any materials. [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 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 18 Application of pesticides, including herbicides. [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 19 Supplementary feeding of livestock. [Consent is not required for this activity 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 20 Significant changes in livestock density (including introduction of grazing), changes in livestock type or grazing season, other than on established reseeded grassland. [Consent is not required for changes of less than 20% in livestock density unless notice has been given that a lower percentage is applicable to a particular site.]
- ARC 22 Changing of agricultural use from hay meadow to any other use.
- ARC 24 Works on, or alterations to, the banks, bed or flow of a drain, watercourse or waterbody.
- 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 31 Developing or consenting to the development or operation of commercial recreational/visitor facilities or organised recreational activities.



GIVEN under the Official Seal of the Minister for
Housing, Local Government and Heritage,
7 July, 2021.

DARRAGH O'BRIEN,
Minister for Housing,
Local Government and Heritage.

EXPLANATORY NOTE

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

The European Union's Habitats Directive (92/43/EEC) (as amended) requires Member States to protect habitats and wildlife areas of European interest by, among other things, designating sites as Special Areas of Conservation in order to create a coherent European ecological network. The hyperlink: http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm which connects to the European Commission Environment (Nature and Biodiversity) website also contains a further link to the text of the Habitats Directive.

The effect of these Regulations is to complete the formal designation of the site as a Special Area of Conservation in accordance with Article 4 of the Directive. The geographical area of the Special Area of Conservation designated by these Regulations is defined in Schedule 1 (a map of the area) and Schedule 2 (a list of the townlands in question or a description of the area). For more detailed maps than those contained in Schedule 1, or for greater detail on boundary delineation, contact should be made with the National Parks and Wildlife Service of the Department of Housing, Local Government and Heritage or by viewing the relevant text or map details on www.npws.ie.

The natural habitat types and animal and plant species lists cited in Schedule 3 of these Regulations are specified, in accordance with the Directive, in order to ensure their conservation (i.e. the measures required to maintain or restore the natural habitats and the populations of species of wild fauna and flora at a favourable status). The updated list of published conservation objectives referred to in Regulation 3 is available on www.npws.ie. Public authorities should have regard to these objectives when undertaking a screening or appropriate assessment of plans or projects in accordance with the EU Habitats Directive.

Those activities that require consent of the Minister or in some circumstances another public authority listed at Schedule 4 to these Regulations are cited for their potential to cause disturbance or damage to the natural habitat types and animal and plant species specified in Schedule 3 of these Regulations. Landowners or occupiers should contact the local National Parks and Wildlife Service office of the Department of Housing, Local Government and Heritage before undertaking any of the works listed at Schedule 4. (See www.npws.ie for contact details). Please note that activities other than those listed at Schedule 4 to these Regulations, such as effluent discharge, construction work, aquaculture, fishing or forestry require a licence or permission from the appropriate consent authority.

These Regulations provide (Regulations 6 and 7) that contravention of the provisions of these Regulations shall constitute an offence. Regulation 6 also provides for penalties.

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