



STATUTORY INSTRUMENTS.

S.I. No. 239 of 2010.

EUROPEAN COMMUNITIES (CONSERVATION OF WILD BIRDS
(INISHKEEL SPECIAL PROTECTION AREA 004116)) REGULATIONS
2010.

(Prn. A10/0748)

EUROPEAN COMMUNITIES (CONSERVATION OF WILD BIRDS
(INISHKEEL SPECIAL PROTECTION AREA 004116)) REGULATIONS
2010.

I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) (as amended by section 2 of the European Communities Act 2007 (No. 18 of 2007) and by section 4 of the European Union Act 2009 (No. 33 of 2009)) and for the purpose of giving further effect to Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 and Council Directive 92/43/EEC of 21 May 1992 (as amended by Council Directive 97/62/EC of 27 October 1997, Regulation (EC) No. 1882/2003 of the European Parliament and of the Council of 29 September 2003, Council Directive 2006/105/EC of 20 November 2006 and as amended by Act of Accession of Austria, Sweden and Finland (adapted by Council Decision 95/1/EC, Euratom, ECSC), Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded and as amended by the Corrigendum to that Directive (Council Directive 92/43/EEC of 21 May 1992)), hereby make the following Regulations:

1. (1) These Regulations may be cited as the European Communities (Conservation of Wild Birds (Inishkeel Special Protection Area 004116)) Regulations 2010.

(2) These Regulations come into operation on 26th May 2010.

2. (1) In these Regulations—

“Directive” means Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009;

“farm or land management plan” means an agreement between the holder of any estate, right or interest in land within the special protection area and the Minister or the Minister for Agriculture, Fisheries and Food for the purposes of, inter alia, compliance with the Directive and Council Directive No. 92/43/EEC of 21 May 1992. Without prejudice to the generality of the foregoing, this may take the form of a plan under the Farm Plan Scheme administered by the Department of Environment, Heritage and Local Government or a Rural Environment Protection Scheme plan (REPS) administered by the Department of Agriculture, Fisheries and Food, or any similar or successor plan;

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 4th June, 2010.*

“foreshore area” means the bed and shore, below the line of high water of ordinary or medium tides, of the sea and of every tidal river and tidal estuary and of every channel, creek and bay of the sea or of any such river or estuary;

“land” includes any structure and any land covered with water (whether inland or coastal), any substratum of land and any estate, right or interest in, on, over or under land;

“Minister” means the Minister for the Environment, Heritage and Local Government;

“public authority” means:—

- (a) a Minister of the Government;
- (b) a local authority within the meaning of the Local Government Act 2001 (No. 37 of 2001); or,
- (c) a board or other body (but not including a company under the Companies Acts) established by or under statute;

“Special Protection Area” or “SPA” means the area which is designated under Regulation 3;

“waterbird” means any bird ecologically dependent on a wetland habitat wholly, or for at least part of their annual cycle;

“wetland” refers to areas of habitat containing water, whether natural or artificial, permanent or temporary, static or flowing, fresh, brackish, or marine.

(2) A word or expression that is used in these Regulations and is also used in the Directive shall, unless the contrary intention appears, have in these Regulations the meaning that it has in the Directive.

3. In order to ensure the survival and reproduction of the species to which Article 4 of the Directive relates, including in particular the species specified in Schedule 3 and having taken account of the matters referred to in Article 4 of the Directive, the area referred to in Schedule 2 and further identified by reference to the maps contained in Schedule 1, is designated as a Special Protection Area.

4. (1) Subject to paragraph (2), a person shall not perform any operation or activity specified in Schedule 4 in the Special Protection Area without the prior written consent of the Minister.

(2) There is no requirement to obtain the consent of the Minister if:—

- (a) the operation or activity is licensed by or subject to the permission of another public authority, or

- (b) the operation or activity is specified as permitted in a farm or land management plan (subject to compliance with any conditions set out therein).

5. (1) Any person who contravenes Regulation 4(1) commits an offence and is liable:—

- (a) on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 6 months, or both, or
- (b) on conviction on indictment to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years, or both.

(2) A summary offence under these Regulations may be prosecuted by the Minister.

Revocation

6. (1) The European Communities (Conservation of Wild Birds (Inishkeel SPA 004116)) Regulations, 2004 (S.I. No. 899 of 2004) are revoked.

(2) Notwithstanding paragraph (1)—

- (a) any civil or criminal proceedings brought under the Regulations revoked in paragraph (1) and pending when these Regulations come into operation 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 revoked in paragraph (1) shall continue to have full force and effect on and after the commencement of these Regulations.
- (c) any act, decision or other thing commenced but not completed by the Minister under the Regulations revoked in paragraph (1) may be continued and completed by the Minister under these Regulations.

SCHEDULE 2

DESCRIPTION OF AREA

The area known as Inishkeel Special Protection Area is situated on the island of Inishkeel in the County of Donegal being the land and waters enclosed on the map (contained in Schedule 1 to these Regulations) within the inner margin of the red line and hatched in red. The area of land known as Inishkeel Special Protection Area is located in whole or in part in the townland of Inishkeel.

SCHEDULE 3

SPECIAL CONSERVATION INTERESTS

Bird Species

Scientific Name	Common Name
<i>Branta leucopsis</i>	Barnacle Goose

SCHEDULE 4

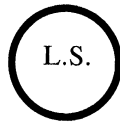
OPERATIONS OR ACTIVITIES REQUIRING CONSENT OF THE MINISTER AND CONTROLLED NATIONALLY UNDER THE PROVISIONS OF THE WILDLIFE ACTS 1976-2000

1. Any activity that involves the deliberate killing or capture of any species of naturally occurring bird in the wild state, save where a specific derogation within the meaning of Article 9 of the Directive is in place.
2. The destruction, damage or removal of nests or eggs or any disturbance, particularly during periods of breeding or rearing, save where a specific derogation within the meaning of Article 9 of the Directive is in place.
3. The rearing or keeping of birds, the hunting and capture of which is prohibited, save where a specific derogation within the meaning of Article 7 of the Directive is in place.

SITE SPECIFIC OPERATIONS OR ACTIVITIES REQUIRING CONSENT

4. Altering watercourses or wetlands, including changing the height of the water table, blocking or altering the flow of the water or deepening any channel.
5. Developing, operating or allowing leisure or sporting activities liable to cause significant disturbance to those birds listed in Schedule 3 of these Regulations or damage to their habitats.

6. Any activity intended to disturb those birds listed in Schedule 3 of these Regulations including by mechanical, air or wind powered or audible means.
7. Construction or alteration of tracks, paths, roads, embankments, car parks or access routes, or using or permitting the use of land for car parking.
8. Planting of trees.
9. Reclamation or infilling.
10. Introduction (or re-introduction) into the wild of plants or animals not currently found in the area.
11. Any activity which destroys habitat, except normal maintenance activities as defined in approved farm plans.
12. Reclaiming land for agricultural purposes, including spraying or burning vegetation, clearing scrub and rough vegetation, draining or moving soil, ploughing, harrowing or reseeded.
13. Any other activity of which notice may be given by the Minister from time to time.



GIVEN under my Official Seal,
26 May 2010.

JOHN GORMLEY, T.D.,
Minister for the Environment, Heritage and Local
Government.

EXPLANATORY NOTE

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

Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 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 for them. The effect of these Regulations is to designate a site as a Special Protection Area in accordance with Article 4 of the Directive and to provide that contravention of the provisions of these Regulations shall constitute an offence.

Under Article 5 of the Directive all species of birds are afforded protection from disturbance, capture and damage to nests and eggs, not just the birds listed on Schedule 3 (with the exception of those birds covered under Articles 7 for hunting, and Article 9 where derogations are listed).

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

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