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BirdWatchIreland
protecting birds and biodiversity

BIRDWATCH IRELAND SUBMISSION

DRAFT AGRICULTURE APPEALS
(AMENDMENT) BILL 2020

A submission by

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Public Consultation on the Forestry Bill 2020

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Summary

BirdWatch Ireland supports a strategic approach to addressing environmental issues as they relate to all sectors. Strong legislation and its sound implementation underpinning effective policy is critical to ensure that wild birds and their habitats in Ireland are protected. In relation to the protection of wild birds as it relates to forestry, the legislation and policy have failed.

The Minister for Land Use and Biodiversity has been quoted in the media in relation to the backlog in forestry licensing as saying that *“there is no point opening up the floodgates without addressing the issues that have caused these problems in the first place”*. Unfortunately, the Minister’s comments have not been borne out in the contents of the Forestry Bill 2020 which proposes to reopen the flood gates without addressing the root causes of the backlog in forestry licensing. The root cause being the failure of the Forest Service to ensure compliance with Irish and EU environmental law evident in its failure to protect wild birds, their habitats and other biodiversity. It is clear that appeals are the ‘symptom’ of the Forest Service’s non-compliance with the law and its own guidelines and the Minister’s bill will put significant barriers in place to block the general public from taking appeals rather than tackling the ‘illness’ itself.

We call on the Minister to reconsider her bill and deliver the root and branch reform of the forestry sector in Ireland which is long overdue. Any changes to the forestry licensing system must ensure that the licensing system delivers decisions which are compliant with Irish and EU environmental law, facilitate public participation and ensures transparency. Any review of forestry licensing must be within the context of the Government’s declared Biodiversity Emergency and must be consistent with our legal obligations to protect biodiversity and water quality as well as promoting sustainable rural development. These are all points which we highlighted with the Minister during her meeting with the Environmental Pillar on the 30th July 2020.

We call on Minister Hackett to:

- Abandon the proposed bill which significantly undermines the ability of individuals and environmental groups from taking legitimate appeals on environmental grounds. The bill also undermines the independence of the Forestry Appeals Committee.
- The Minister should instead prioritise a root and branch reform of the forestry sector in Ireland. This should ensure that the next Forestry Programme delivers a forestry model that protects and enhances the environment rather than being a significant pressure on biodiversity and water quality.
- This review must reform the deeply flawed licencing system which is the root cause of the current backlog in forestry licences. This review should ensure that forestry legislation and forest service guidelines deliver licencing decisions which are compliant with Irish and EU environmental law. The

licensing system should be transparent and ensure access to justice. There are tools available, such as forestry sensitivity mapping which would aid the department in carrying out environmental assessments.

BirdWatch Ireland remain ready and willing to support the Minister and the department in making the transition to a forestry model which protects wild birds, their habitats and other biodiversity that we have and a licensing system which is legally compliant and efficient. Guarantees are needed upfront however that this is the intent of the Department and the Minister.

Afforestation and lack of protection for wild birds and habitats

Looking forward, whether forestry in Ireland will have a net positive or negative influence on biodiversity will ultimately depend on a range of factors, such as where afforestation takes place, the model of forestry used and the environmental safeguards that are implemented. Afforestation and forestry management is currently one of the greatest drivers of biodiversity loss in protected terrestrial and freshwater habitats in Ireland. According to the National Parks and Wildlife Service (NPWS) forestry is currently a significant threat and pressure on habitats and species protected under the Habitats Directive¹ and the Birds Directive². While according to the Environmental Protection Agency forestry is the greatest pressure nationally on our last remaining lakes and rivers of high ecological value³.

The indications are that unless there's a shift in government policy then the predominance of nonnative plantations and the use of clear-felling within Irish forestry will continue. That is to say that plantations of non-native conifers will be planted on marginal farmland and clear-felled. The expansion of forestry will therefore exacerbate the accepted negative biodiversity and water quality impacts associated with this model of forestry on a regional and catchment scale. One of the most pressing concerns for BirdWatch Ireland is that afforestation will be strategically targeted on marginal agricultural land⁴, particularly in areas where low intensity land uses such as hill farming have persisted for generations. This marginal farmland contains some of the important remaining areas for biodiversity in the country, including high-status waters bodies⁶, protected semi-natural habitats and High Nature Value farmland (HNVf)⁷. Commercial forestry in its current form is not compatible with the sustainable management of many of these sites.

All wild birds are protected under national and EU law. Two thirds of Ireland's 202 regularly occurring wild bird species are red or amber listed Birds of Conservation Concern⁸. Research published in 2020 by Irish scientists shows that "The highest levels of recent afforestation overlapped with areas where the highest species richness for lowland farmland birds and for woodland/scrub birds was observed. This is at the centre of the conservation issue: areas prioritised for afforestation have coincided with regions where the highest species richness of threatened birds occurs"⁹. Of the ten-priority species within BirdWatch Ireland's

¹ NPWS, 2013. The Status of Protected EU Habitats and Species in Ireland. Overview Volume 1. Unpublished Report, National Parks & Wildlife Services.

² NPWS (2014) Ireland's Summary Report for the period 2008 – 2012 under Article 12 of the Birds Directive. Dublin: National Parks & Wildlife Services. Department of Arts, Heritage and the Gaeltacht.

³ Department of Housing, Planning, Community and Local Government (2017) Draft River Basin Management Plan for Ireland (2018-2021), Dublin: Department of Environment, Heritage and Local Government

⁴ Forest Service (2016) Land Types for Afforestation; Forest Service, Department of Agriculture, Food & the Marine, Ireland, Johnstown Castle Estate, Co. Wexford

⁵ COFORD (2016) Land Availability Working Group. Land Availability for Afforestation - Exploring opportunities for expanding Ireland's forest resource. COFORD, Dublin

⁶ O'Moran, J. and Sullivan, C. (2017) Co-benefits for Water and Biodiversity from the Sustainable Management of High Nature Value Farmland.

⁷ Matin, S., Sullivan, C.A., Ó hÚallacháin, D., Meredith, D., Moran, J., Finn, J.A. and Green, S (2016) Map of High Nature Value farmland in the Republic of Ireland. *Journal of Maps* 12: 373–376

⁸ Colhoun K. & Cummins, S. 2013 Birds of Conservation Concern in Ireland 2014-19. *Irish Birds* 9:523-544

⁹ Corkery, I., et al (2020) Changes in forest cover result in a shift in bird community Composition. *Journal of Zoology* 310:306-314

Group Action Plans for Irish Birds¹⁰ which are being impacted by afforestation and woodland management, six are Red listed and three are Amber Listed BoCCI's. This includes species like Curlew^{11 12} whose population has undergone a decline of 97% in the last 40 years and is now facing national extinction¹³ Many areas of biodiversity importance in Ireland receive no formal protection or designated status and the Forest Service has failed to protect these areas despite this being highlighted in the Environmental Report of the Forestry Programme and the European Commission State Aid Decision for the Forestry Programme.

BirdWatch Ireland has several times in the past highlighted to the Forest Service that it is failing to comply with EU nature laws and also failing to protect Annex 1 bird species in the wider countryside (outside of Natura sites) as well as birds of conservation concern¹⁴. Curlew, Lapwing, Twite, Whinchat and a range of other lowland farmland birds are known to breed in areas of high nature value in the wider countryside and their populations have crashed (see Figure 1 below).

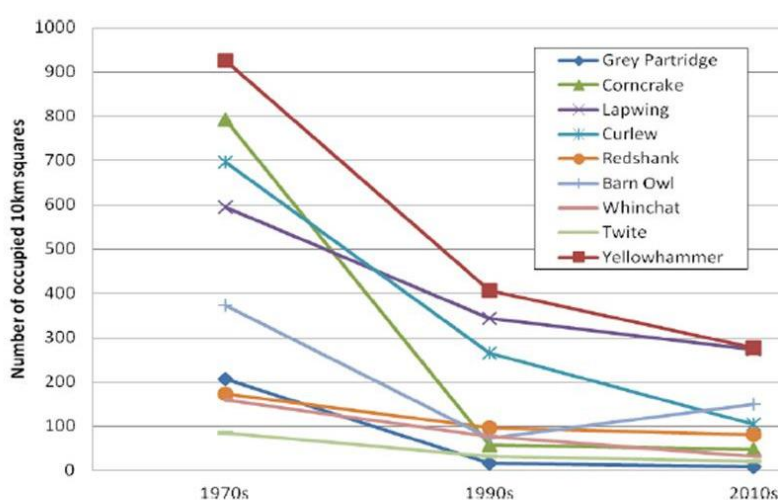


Figure 1: Range (number of occupied 10km squares) in 1970, 1990 and 2010 breeding bird atlases of Red-listed lowland farmland bird species in Ireland

The Forestry Programme and Climate action

The forestry sector and elements within the farming sector have frequently argued that the governments afforestation targets are essential to our national effort to offset emissions and tackle climate change. This is simply not the case. As detailed by the Intergovernmental Panel on Climate Change, such land sequestration is impermanent (relative to the thousands of years of mitigation required), highly uncertain, and subject to carbon cycle rebound effects that seriously reduce their value¹⁵. In addition, recent research in Scotland has shown that area-based targets for forestry are not a suitable indicator of carbon sequestration and can unintentionally generate emissions¹⁶. Weak arguments based around the limited carbon sink available in commercial plantations and their mainly short-lived products are distracting from the real and urgent need

¹⁰ BirdWatch Ireland (2014) BirdWatch Ireland's Group Species Action Plans for Irish Birds: Prioritisation of actions, species priorities and implementation. BirdWatch Ireland, Kilcoole, Co. Wicklow

¹¹ Buscardo, E., et al. (2008) The early effects of afforestation on biodiversity of grasslands in Ireland. *Biodiversity and conservation*: 17(5), 1057-1072.

¹² Franks, S., et al., (2017): Environmental correlates of breeding abundance and population change of Eurasian Curlew *Numenius arquata* in Britain, *Bird Study*, DOI: 10.1080/00063657.2017.1359233

¹³ Donaghy, A., (2016) Breeding Curlew Survey 2016: Results from Sligo, Leitrim, Cavan and Monaghan & East Galway, Roscommon, Offaly and Longford (Excluding the Shannon Callows). Unpublished report to National Parks and Wildlife Service. BirdWatch Ireland 2016

¹⁵ Ciais P, Sabine C et al (2013) Carbon and Other Biogeochemical Cycles, Ch. 6 in Intergovernmental Panel on Climate Change (2013) Fifth Assessment, WG1.

¹⁶ Matthews, K. B., Wardell-Johnson, D., Miller, D., Fitton, N., Jones, E., Bathgate, S., ... & Perks, M. (2020). Not seeing the carbon for the trees? Why area-based targets for establishing new woodlands can limit or underplay their climate change mitigation benefits. *Land Use Policy*, 97, 104690

for Ireland to rapidly decarbonise our society and address emissions from the land use sector. Any efforts to improve carbon sequestration should focus on actions that can deliver longterm carbon sequestration and co-benefits for biodiversity, such as peatland and wetland restoration, sustainable High Natura Value farming practices and permanent native woodland creation.

The McKinnon Review and the Forestry Bill 2020

BirdWatch Ireland was consulted by Mr McKinnon as part of his research on his external review of the forestry license approval process carried out, on behalf of Minister Andrew Doyle. We initially welcomed this review as it was an opportunity to highlight the range of failings in the existing afforestation protocols. The review was partly initiated in response to deep concerns about the Forest Service's failure to implement Irish and EU environmental law and their failure to address the concerns of communities in counties like Leitrim, around the social and economic impacts blanket afforestation was having on their communities.

We highlighted with Mr McKinnon that:

- This review of the approvals process must be framed in the context of Ireland's declared state of climate and biodiversity emergency (May 2019).
- The review must be conducted in the context of the legally binding duties and obligations that Ireland has as a member of the EU and also as a party to both the Espoo and Aarhus UNECE conventions.
- The approvals process needs to be coherent with Ireland's plans and commitments on heritage, biodiversity and landscape protection and compliant with Ireland's legal obligations under National, EU and International law - not limited to, but particularly in respect of habitats, birds and other wildlife, air quality, water quality, climate change, landscape, and transnational boundary impacts.

BirdWatch Ireland remain deeply concerned about many aspects of the McKinnon report. The review has done little to address the root issues of environmental protection or public participation in forestry licensing and to the contrary many of its recommendations further entrench the view that environmental protection and public participation are a barrier that should be bypassed in order to streamline the issuing of flawed licenses.

While increasing forest cover in Ireland has the potential to deliver positive social and environmental benefits, the reality is that the current approach to forestry is resulting in a situation where the sector is one of the leading drivers of biodiversity loss and is a significant pressure on water quality. Current government forestry policy is a major threat to species like Hen harrier, Curlew and Freshwater Pearl Mussel. The current forestry programme is according to research carried out by BirdWatch Ireland failing to implement basic environmental safeguards required by Irish and EU law for High Nature Value farmland, threatened birds and habitats protected under the Birds and Habitats Directive¹⁷.

The report itself highlights the Government's failure to address these issues and attributes inadequate expertise and resourcing as contributing factor to the current backlog in applications, however its recommendations do not go far enough to address the root cause of these issues.

The recommendation of the report which call for less time for the NPWS to respond to applications and the suggestion that the public should have to pay fees to make observations on applications would do more harm than good.

¹⁷ BirdWatch Ireland (2019) Greening Irish Forestry Report available here <https://birdwatchireland.ie/publications/birdwatch-ireland-2019-greening-irish-forestry-report/>

The approvals process must operate within a wider national and international regulatory framework including with regard to the Aarhus Convention and the European Charter on Fundamental Rights. An evaluation of the existing system must be carried out to inform and recommend changes, which McKinnon did not take account of when making his recommendations.

We call on the Minister to reject the recommendations of the McKinnon report which would undermine environmental oversight and public participation on the forestry licensing system.

Compliance with Environmental Law

It is our assertion that the biggest issue with the public and environmental groups making submissions and appeals on forestry licences is not that those submissions are vexatious but rather that the submission are valid. The submissions have forced the Forestry Appeals Committee to accept that the Forest Service's protocols and guidelines were not compatible with the requirements of Irish and EU environmental law. These are issue that BirdWatch Ireland have been highlighting with the Department and successive Ministers for many years through direct meetings, consultations and submissions, and in related forums such as the Hen Harrier Threat Response Plan Consultative Committee. It is deeply regrettable that our warnings were not heeded, and it remains deeply frustrating that the Forest Service have still not taken the opportunity to implement the range of constructive solutions we have suggested to address these issues.

Based on the records received by an environmental NGO under an AIE request, inspection rates of felling licenses were running at a national average of 19% in 2018 but were as low as 6% in Co. Leitrim (8 inspections out of 128 licenses) and 1% in Co. Roscommon (1 inspection out of 102 licenses). The latest records published by the department (12th June 2020) indicate that 46.3% of appeals to the Forestry Appeals Committee result in either a variation or a cancellation of the license or approval under appeal. This would indicate that almost half of the decisions being made by the Forest Service Inspectorate are flawed. It is our understanding that the decisions of the Forestry Appeals Committee itself are subject to at least one judicial review. This evidence suggests that there are serious issues when it comes to ensuring legal compliance at all stages of the licensing system. This highlights just how inappropriate it is to limit public participation in the licensing system when it is the system itself that is flawed not the public's access to appeal.

The Department has accepted that *"the system of procedures they had in place to screen environmental impacts on protected habitats and species was non-compliant with European law"* and this necessitated change in the Appropriate Assessment Procedure (AAP)-according to statements made by [Minister Creed](#), [Minister Doyle](#) and [Minister Calleary](#) in the Dáil.

The current Forestry Programme (2014-2020) is underpinned by almost €300 million of public funding. This funding is contingent on the sector meeting conditions laid down by the [European Commission](#) in its State Aid Decision for the Programme¹⁸. This includes various compliance with national and EU environmental law. Ensuring compliance with the Irish and European environmental law is essential to the existence of the forestry sector as well as continued access to certification dependent export markets. The ongoing failure of sector to address its non-compliance with environmental law is much more serious than the current backlog in licensing as it in fact threatens the very forestry programme itself.

There are two implications emanating from the Department's admission that licensing has not been compliant with Art 6(3) of the Habitats Directive.

- 1. Legacy Issues** – Illegal afforestation and felling has been occurred which is likely to have had significant negative impacts on habitats and species protected by the Habitats and Birds Directives in

¹⁸ https://ec.europa.eu/competition/state_aid/cases/255206/255206_1633791_93_2.pdf

Ireland. The Minister must work with her colleague Minister of State for Heritage Malcolm Noonan and other relevant departments and bodies to ensure that actions are taken to remediate and protect any sites which have been impacted by past illegal afforestation. The six Special Protection Areas designated for the conservation of Hen harrier (*Circus cyaneus*) should be an immediate priority as part of a comprehensive Hen harrier Threat Response Plan.

- 2. Ongoing licencing issues** – There is insufficient information in the public domain to give us confidence that the admitted shortcomings in the AAP have been resolved and the full suite of environmental obligations outlined in the Habitats and Birds Directives, EIA Directive and Water Framework Directive are being fully adhered to. We therefore call on the Minister to actively engage with BirdWatch Ireland and the Environmental Pillar to ensure the full compliance with environmental law.

The Bill Itself

The Forestry Bill 2020 is an Act to amend the Agriculture Appeals Act 200, with the stated intention of aligning the forestry licencing and appeals processes with similar planning processes. There are several provisions within the bill that will create significant additional barriers for the general public to take appeals against forestry licences.

Issues with public consultation period

The timing of the public consultation was opened just before the August Bank Holiday weekend, during the Dáil summer recess and during the peak summer holiday period is not conducive with ensuring public and political participation in the consultation. The twenty-eight-day consultation in this context was extremely short and has put us under significant pressure.

The Aarhus Convention Compliance Committee has ruled on such instances where public authorities set consultations over traditional holiday periods as it does not comply with **Aarhus Convention requirements to ensure 'effective public participation'**. Specifically, the ACCC stated the following in relation to a case in Spain:

*"Another issue is the time of year that the public participation is held. There are certain periods in public life which are traditionally considered as holidays and not much is expected to happen. For example, the days of the major religious festivals for each country, national days and to a certain extent, the main summer vacation period. In its findings on communication ACCC/C/2008/24 (Spain), the Compliance Committee held: "a period of 20 days for the public to prepare and participate effectively cannot be considered reasonable, in particular if such period includes days of general celebration in the country".*²⁸⁷
ECE/MP.PP/C.1/2009/8/Add.1, para. 92.

The Government's own Consultation Principles Guidance¹⁹ document states "*longer consultation periods may be necessary when the consultation process falls around holiday periods*".

Definition of a relevant person

The bill introduces through an amendment to Section 14A of the Principal Act a new definition of "a relevant person" who may appeal to the Forestry Appeals Committee against a forestry licensing decision. The bill implies that those who have pursued licence applications or whose licences have been amended are included and have rights to appeal and are considered a "relevant person". The bill however excludes third party appellants in the newly inserted s.14A(4)(b) (iii) to (vi). Given the serious issues with public notice in regard to forestry licensing, the archaic public consultation platform on the DAFM website and the acknowledged issues with environmental law compliance in forestry licensing the bill places an unreasonable

¹⁹ <https://www.per.gov.ie/en/consultation-guidelines/>

burden on the public in regards to their access to appeal. In effect someone wishing to highlight genuine issues of legal compliance with a granted forestry license will be blocked from doing so.

The new s.14A(4)(b)(iv) specifies a further class of relevant person to be included. It firstly to the criteria:

- a person with land “*adjoining*” the land which has been the subject of the decision, and

The term “adjoining” is very specific. This could potentially exclude someone on the basis of a separation by a road, field, stream etc., in circumstances where the impacts of the decision could still materially affect them, or their interests. This would also encourage applicants to tailor applications so that they can purposely exclude appellants. Limiting the scope of a “relevant person” to the individual who have land joining the relevant site will not only limit community access to appeal it would event block the majority of residents within the relevant townland. This is an incredibly narrow category, which has the explicit intention of limiting potential appellants even where they are very impacted and/or have an interest.

This extremely limiting “adjoining” criteria is further compounded by the compound requirement that the Forestry Appeals Committee at their own discretion can determine whether a person will be materially affected by a licensing decision specifically with reference to “the person’s enjoyment of the land or reduce the value of the land.” There are no criteria against which the Forestry Appeals Committee are to judge “the persons enjoyment of the land” against. There are no obligations on the Forestry Appeals Committee to justify their decision and there is no way for a person to appeal the committee’s determination. Given that the culture of self-regulation within the sector and the ambitious targets set by the sector for afforestation it is not beyond the bounds of possibility that the Forestry Appeals Committee may decide to take a very narrow view of the definition of a person who will have their enjoyment of the land effected, in effect preventing individuals who may have a legitimate concern about the environmental impacts of a licence from taking an appeal.

Given the accepted poor track record of forestry licensing when it comes to the implementation of environmental law the Minister should amend the bill so that any person raising legitimate concerns in relation to environmental protection such as: such as inadequacies in an application’s ecological assessment, scientific evidence of the presence of birds, habitats or other species of conservation concern, the failure to submit an Environmental Impact Assessment or a Natura Impact Statement or deficiencies within a screening decision for an Environmental Impact Assessment, an Environmental Impact Assessment, a screening for Appropriate Assessment, a Natura Impacts Statement or an Appropriate Assessment, may rightfully be considered a relevant person.

Giving the Minister power to charge or recover fees

The bill proposes that the Principal Act is amended to allow the Minister to “*charge such fees as he or she may prescribe for an appeal under section*

14A (4) and different fees may be charged for different classes of such appeal.

(c) When making an appeal under this section a relevant person shall-

(i) pay any fee prescribed under section 14B, and

(ii) comply with regulations for the time being made under sections 7 and 15.”

The introduction of the requirement for a person to take an appeal irrespective of whether an appeal is deemed valid will create an additional barrier to public participation and transparency. This is an example of the Bill’s intention to place barriers in the way of individuals, community groups and environmental groups, preventing them from taking valid appeals against flawed decisions. This is a clear example of the failure of the Minister to take the requisite measure to tackle the root of the issue, which is the departments own failure to ensure that licensing decisions are in line with environmental law. Greater efforts should clearly be made to prevent inappropriate applications from getting into the system in the first place and ensuring that any applications which would have a significant negative impact on the environment are rejected at an early

stage. Barriers should not be placed in the way of individuals or groups who are fulfilling a public service by pointing out that a licensing decision is not legally compliant.

While it is rare that individuals or communities would have to appeal multiple planning applications at a time, this is frequently the case in forestry, where there may be a need to make submissions or appeals on multiple applications in environmentally sensitive areas or areas undergoing heavy afforestation. The introduction of fees would make the process exorbitantly expensive. The potential need for an environmental group to highlight issues with multiple applications must be considered in the context of the ongoing failure of the Forest Service to assess cumulative impacts of applications, something which is legally required under Art 6(3) of the Habitats Directive.

It is also of concern that the fees and the different classes of such appeal mentioned in the bill are not defined. Therefore, the Minister is holding a public consultation but is not informing the public on what the actual changes may mean in practice. The requirement for any fee may prevent environmental groups from taking appeals against poor licensing decisions, preventing us from having access to justice. The imposition of extortionate fees would obviously prevent appeals from being taken which would ultimately result in flawed decisions going unchallenged. Under Aarhus and the Charter on Fundamental Rights of the EU the right to public participation and right to administrative review cannot be "*prohibitively expensive*". The proposed changes would not be compliant with this and would be open to legal challenge.

We call on the Minister not to make amendments to the act which would introduce charge or recover fees for appeals.

The definition of an environmental body

The bill has specified additional criteria defining an environmental body:

"*environmental body*" means a body or organisation (not being a state authority)-

- (i) the aims or objectives of which relate to the promotion of environmental protection,
- (ii) which has, during the period of 12 months preceding the appeal, pursued those aims and objectives;

The introduction of additional criteria around what groups should qualify as an environmental body may create new obstacles to the right of appeal for environmental NGOs or community groups whose remit is broader than purely environmental concerns. These groups may legitimately work to address the socio-economic issues associated with afforestation and forestry management in their area and they should not be discriminated against based on their efforts to address all three pillars of sustainability, namely the environmental, the social and the economic.

We would ask the Minister to not place additional barriers in the way of community groups and individuals who may have legitimate concerns about forestry licenses.

Undermining the independence of the Forestry Appeals Committee

The bill gives the Minister power to issue "such general directives as to policy in relation to forestry appeals as the Minister considers necessary and the Forestry Appeals Committee shall, in performing its functions, have regard to any such directives." Given the department's ongoing failure to meet its ambitious afforestation targets there is clearly significant incentive for the Minister to reduce the number of successful appeals being taken on environmental grounds. In this context it is of concern that the Minister may issue directives to the Forestry Appeals Committee, undermining their independence. Despite the assurances given in the bill giving the Minister broad discretion to direct the approach of the Forestry Appeals Committee would undermine their independence, impacting on the quality of their decisions.

We would ask the Minister not to undermine the independence of the Forestry Appeals Committee. Greater efforts should be made to ensure that full legal compliance is a basic requirement for any decision made by

the committee and that their work should be underpinned by the precautionary principle and the requirements of the Aarhus Convention.

Looking Forward - Greening Irish Forestry

Looking forward, whether forestry in Ireland will have a net positive or negative influence on biodiversity will ultimately depend on a range of factors, such as where afforestation takes place, the model of forestry used and the environmental safeguards that are implemented.

- ✓ Right Tree
- ✓ Right Place
- ✓ Right Management

An improved licensing system is needed to ensure that Ireland can deliver a better forestry sector for people and planet. A more stringent licensing system will reduce the need for groups like us to take appeals and will ultimately speed up the process.

In Birdwatch Ireland's [Greening Irish Forestry Report](#) we highlighted that the numerous negative impacts on the environment identified in the report stem from:

- The failure to implement existing safeguards
- Gaps in the existing procedures

We recommend that the Minister works constructively with Birdwatch Ireland and the Environmental Pillar to implement the recommendations of the report, some of which we will highlight below.

A. The failure to implement existing safeguards

Many aspects of the AAP on paper were good however, eNGOs are aware through AIE requests and experience that the procedures for AA and EIA are not properly implemented. These issues are compounded by inherent issues with self-regulation and the failure NPWS/Forest Service to accept ownership of Birds and Habitats Directives obligations:

We have serious concerns about:

- The failure to carry out legally compliant AA Screening Decisions.
- The failure to legally compliant AA in relation to sites adjacent / outside of Natura 2000 sites.
- The failure to assess indirect and cumulative impacts.

We don't just need more ecologists; we need a better system that they can work within and we need a review of the legal compliance which McKinnon didn't actually cover

B. SEA and NIS of current Forestry Programme –

Failure to Implement mitigation measures

The Strategic Environmental Assessment (SEA) and Natura Impact Statement (NIS) of the Forestry Programme 2014-2020 identified that mitigation measures would be necessary in order to prevent significant adverse or residual impacts on the environment. Many of the mitigation measures which were developed to prevent negative impacts on Natura 2000 sites and Annex species have never been implemented.

Identified mitigation measures should be fully implemented:

- ✓ Establish a monitoring system to ensure that the Forestry Programme is not negatively impacting biodiversity.
- ✓ Complete site-by-site ecological assessments of the impact of forestry on all qualifying interests of all Natura 2000 sites.
- ✓ Complete site-by-site ecological assessment where Annex I habitats or the habitat of Annex I birds or Annex II species occur or are likely to occur.
- ✓ Avoid sites with breeding Annex I bird species within Natura sites.

The NIS states that ‘there should be transparency and auditability of the system for control/enforcement of these mitigation measures, including the development of indicators for the assessment of their effectiveness. This will be carried out through monitoring (see Section 6.2)’. We have not seen any monitoring report of the 2014-2020 Forestry Programme though it monitoring is a requirement of the NIS.

The SEA Environmental Report of the Forestry Programme stated that “negative effects of afforestation must also be avoided on areas of high ecological value including areas under high natural value farming and the amount of unenclosed/unimproved land available to afforestation projects is also restricted. In the context of ensuring protection of biodiversity in the wider countryside, land immediately adjoining these areas (and in particular Natura 2000 sites) should also be carefully screened and afforestation of this land should be avoided if this may compromise a broader ecological network linking these habitats”. The evidence shows that substantial swathes of high nature value farmland have been lost around the country and especially in north midlands.

C. Ecological assessments for AA / EIA

The need to ensure that forestry is not negatively impacting on the qualifying interests of Natura 2000 sites is legally required by both the Birds Directive (Article 2, Article 4 (1), Article 4 (2), Article 4(4), Article 5) and the Habitats Directive (Article 6(3) and Article 6(4)). High-level assessments of potential conflicts between forestry with the legal protection afforded to Natura 2000 sites would aid the Forest Service in managing existing forestry within Natura 2000 sites and would help to inform ecological assessments including AA and EIA.

Certain Natura 2000 sites are incompatible with commercial forestry or they may be incompatible with certain types of forestry. This should be assessed thereby removing the need to carry out site by site AA in the future. In general, there needs to be far more ecological expertise within the licensing system ensuring the rigorous ecological assessments are carried out on **all afforestation applications** and that the overarching systems and guidelines are in place to protect habitats and species.

- ✓ Complete site-by-site ecological assessments of the impact of forestry on all qualifying interests of all Natura 2000 sites.
- ✓ Develop species specific safeguards to protect species (e.g. Red and Amber listed Birds of Conservation Concern in Ireland) which are known to be negatively impacted by afforestation and forest management.
- ✓ Develop and implement species specific guidelines to inform ornithological assessments and mitigation measures for species (e.g. Red and Amber listed Birds of Conservation Concern in Ireland) which are known to be negatively impacted by afforestation and forest management.
- ✓ Develop and implement species specific thresholds for forest cover in order to protect Red and Amber listed Birds of Conservation Concern in Ireland which are known to be negatively impacted by afforestation and forest management.
- ✓ Ensure foresters and forestry inspectors are trained in the identification of protected habitats and species.
- ✓ Employing regional ecologists to carry out site by site ecological assessments

- ✓ Ensuring that the NPWS are sufficiently resourced to allow them to fulfil their role as statutory consultees.
- ✓ All afforestation sites should be surveyed for the presence of semi-natural and species rich grassland before consent is granted for afforestation
- ✓ Pre-afforestation site surveys should map habitats using a standard classification and note the presence of indicators and other biodiversity features
- ✓ Foresters submitting grant applications should have completed accredited ecological training courses or employ qualified ecologists

D. Use forestry sensitivity mapping

A landscape-based approach to afforestation using spatial planning allows planners to foresee and manage potential conflicts with conservation objectives. This approach also ties in with the Minister's ambitions on developing a national land use plan. We know where many species and habitats are, and we should use this knowledge to avoid unnecessary conflicts.

Sensitivity mapping tools are already used in Ireland to identify areas of high, medium or low importance to birds as they relate to wind farm planning. A forestry sensitivity mapping tool could be beneficial to help support early identification of sites potentially important to birds, their habitats and other species, potentially allowing for limited resources to be targeted towards the cases where applications have the highest risk of negatively impacting biodiversity. Avoiding unnecessary conflicts between our national afforestation and biodiversity targets will ultimately be beneficial for the forestry sector.

- ✓ Develop and implement a 'Bird Sensitivity Mapping Tool for Forestry' which will help to inform the future sustainable expansion of forestry in Ireland.

E. Protect High Nature Value farmland

Under the EU's Common Agricultural Policy, the Rural Development Policy there is an obligation that *"no inappropriate afforestation of sensitive habitats including areas under high nature value farming takes place."*

These obligations are acknowledged within the current Forestry Programme in Priority 4 (a) but there are currently no guidelines or recommendations within the afforestation approvals process to implement these obligations. There is actually no working definition of HNV farmland in Ireland despite definitions existing at an EU policy level and despite Ireland playing a leading role in the development of HNV policies through our results based agri-environmental schemes.

- ✓ Develop a HNVf mapping tool using existing bird, biodiversity and landcover data to prevent the inappropriate afforestation of HNVf.
- ✓ Update the Environmental Requirements for Afforestation guidelines so that ecological reports are required from qualified ecologist for any site which is likely to support FPO species.
- ✓ Ensure that the Forest Service use sensitivity mapping layer that includes the most up to date NPWS data on the distribution of FPO species when assessing applications.

F. Review existing thresholds for EIA

The 50 ha mandatory threshold for EIA screening is way too high to screen out significant environmental impacts. For example, the national average enclosed field size is 2.5 ha and the average Irish farm is 32.5 ha; while the average size of private grant-aided afforestation since 1980 to 2016 was 8.8 ha. Even ignoring the potential for applications being designed to avoid the EIA thresholds through project splitting, the 50ha threshold is way too high. This is evidenced by the fact that almost no EIAs have ever been completed for forestry projects.

- ✓ The 50ha threshold for a mandatory EIA should be revised and scientifically justified thresholds should be adopted for sites which are environmentally sensitive or are of high scenic amenity.

Public Participation in Forestry Licensing

In addition to ensuring improved environmental safeguards the Minister should reform the forestry approvals process to ensure that it is transparent and facilitates public participation, in line with the wider national and international regulatory framework including the Aarhus Convention and the European Charter on Fundamental Rights.

i) Applications

The current system for notifying the public of licenses are archaic. Licenses are only identified at a townland level and there is no supporting information available online to allow the public to make an informed assessment on the nature of the proposal. An example of this is given in figure 2 below. The current system falls well short of the Minister’s stated ambition of bringing forestry licensing in line with the general planning system.

Any person may make a submission or observation to the Minister within 30 days from the date of this notice, i.e. by 01 March 2020						
CONTRACT NO	SCHEME	DED(s)	TOWNLAND(S)	DIGITISED AREA (HA)	COUNTY	CATEGORY
CN85523	Afforestation	KILLASPUGLONANE	MOYMORE NORTH	3.66	Clare	Mixed Conifer/Broadleaf
CN85433	Afforestation	RIVERSTOWN	HALLS	2.01	Leitrim	Mixed Conifer/Broadleaf
CN85250	Afforestation	DERRYGORRY	CAVAN (MOUTRAY); ESKER	10.46	Monaghan	Mixed Conifer/Broadleaf

Figure 2. A public notice on the DAFM website only showing very limited information on the location and nature of live applications.

ii) Decisions

The Forest Service are currently failing to implement their own legislation in relation to Forestry Licensing. Under the Forestry Regulations (S.I. 191/2017) the Department is legally obliged to make licensing decisions and conditions available to the public via the DAFM website. The Department is currently failing to fulfill this obligation and has tried to force NGOs to access planning conditions under AIE - which they then refuse to give us on the basis that the costs are prohibitively expensive.

Ensuring the public access to a license’s conditions and the relevant information that informed those conditions, such as submissions from the NPWS, are essential to allow the public to assess issues such as the environmental impact of a license. This information is needed to decide whether or not to appeal a decision. The failure of DAFM to make this information publicly available increases the likelihood that a decision will

be appealed, a situation that should be resolved in the interests of all parties.

Afforestation Decisions Report 03-JAN-20

Contract No	Townland	County	Area (ha)	Decision	Decision Date	Latest Appeal Date
CN85099	Annagharnet	Cavan	2.01	Approved	02-Jan-20	30-Jan-20
CN85000	Coolbane	Cork	2.48	Approved	30-Dec-19	27-Jan-20
CN84531	Corglass	Longford	22.48	Approved	23-Dec-19	20-Jan-20
CN84412	Glen	Sligo	35.85	Approved	19-Dec-19	16-Jan-20
CN83436	Ballindrumlea	Roscommon	4.04	Approved	19-Dec-19	16-Jan-20

Figure 3. A public notice on the DAFM website only showing very limited information on the location and status of afforestation decisions.

iii) Appeals

The Department is obliged to be able to furnish this information in timeframes commensurate with the public's right to examine the decision and properly determine if they wish to proceed to seek a review of the decision. The current system is not fit for purpose in this regard.

The Department further recognises such obligations here:

<https://www.agriculture.gov.ie/forests-service/public-consultation/licence-applications-for-felling-afforestation-for-rest-roads-and-aerial-fertilisation-2020/register-of-decisions/>