



BirdWatchIreland
protecting birds and biodiversity

Public consultation on review and update of Wildlife Legislation

A submission by the staff at BirdWatch Ireland

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September 13 2024

Introduction

BirdWatch Ireland is Ireland's leading charity focused on the conservation of wild birds. Established in 1968, we currently have over 15,000 members and supporters and a local network of 24 active branches nationwide. As an organisation, our conservation team is actively involved in conservation, research, and monitoring. Our policy and advocacy team are active stakeholders contributing to conservation at a national and EU level. We are proud members of BirdLife International, the Irish Environmental Network, Stop Climate Chaos, and the Sustainable Water Network, and a founding partner of the Fair Seas coalition.

Our vision is that Ireland should become a world leader in nature conservation and restoration and the sustainable management of our environment. Ireland could lead the EU as a champion for nature conservation during the Irish presidency in 2026. The Review of Ireland's Wildlife Legislation including the Wildlife Act 1963, as amended (hereby referred to as the Wildlife Act) and the Birds and Habitats Regulations 2011 is very welcome. Birdwatch Ireland has long called for the Wildlife Act, in particular, to be brought into line with the legal requirements of the European Union Natura Directives, especially the Birds Directive.

BirdWatch Ireland welcomes this opportunity to respond to the public consultation on review and update of Wildlife Legislation. We would welcome further engagement on these suggestions and the opportunity with the Department to discuss our response in more detail. Our staff have direct and hands on experience with interpretation and implementation of the Ireland's wildlife legislation, particularly as it relates to the protection and conservation of wild birds. This experience includes:

- Our involvement in the Birds Case (C418-04) complaint in 2004 where certain provisions of the Birds and Habitats Directives had not been fully transposed into Irish law and subsequent engagement on implementing the ruling of the European Court of Justice on the Birds Case, including State Programmes of Measures.
- Our campaign and advocacy on the 2015 Review of Section 40 of the Wildlife Act.
- Our involvement in the Gulls Committee set up by the National Parks and Wildlife Service (NPWS).
- The hundreds of phone calls and emails we have received in relation to the protections for birds as it relates to hedge cutting, urban tree cutting, hedgerow removal, issues regarding birds nesting and roosting in buildings,
- Our experience and research into disturbance by people and dogs of birds in Special Protection Areas (SPAs), in wildlife crime including cases of poisoning of birds of prey, review of planning applications, interaction with our European Union counterparts through the BirdLife partnership, evidence of disturbance and breaches of the law as noted by our hundreds of volunteers doing survey work, involvement in policy analysis and development on agriculture, forestry, renewables and fisheries in particular.

Our submission draws on this experience but does not cover everything, due to the complexity of the Wildlife Act and its various amendments over time, the relationship between that Act and the

2011 Birds and Habitats regulations and inadequacies in implementation. We hope, if capacity and resources allow, to provide input into this review as it progresses and future draft legislation.

Four additional points are important to highlight as regards the wildlife legislation:

- 1. The need for Government to provide clear information to other Government departments and the general public on the legislation to protect wildlife and how it should be implemented and enforced.**

It is clear from our engagement and interaction with the general public, local authorities and some government departments that there is a lack of knowledge of some elements of the law protecting wildlife. The effectiveness of any law lies in the knowledge about it and its implementation and enforcement of it. Considering the number of calls and emails we received at BirdWatch Ireland in particular about nest protection, hedgerow removal and hedge cutting, it is clear that people are not sure about the laws protecting wild birds and their habitats. A dedicated Wildlife Crime unit must be set up by Government to assist and in addition, efforts should be made with the new team of Local Authority Biodiversity Officers as regards, education and awareness raising on wildlife legislation not only with the public but within local authorities too.

- 2. The need for Government to implement and enforce the law properly.**

All wild birds are protected yet 63% of Ireland's 211 bird species are Red or Amber listed Birds of Conservation Concern in Ireland (Gilbert *et al* 2021¹). It is our view that these declines are attributable, at least in part, to inadequately transposed legislation and illegal exemptions, inadequate environmental assessment, inadequate survey work and research, sectoral policies that are driving bird declines and inadequate implementation and enforcement of the law. The spirit of Article 1 of the Birds Directive should guide its implementation and be at the forefront or central to decisions and policies. It is critical that review of the Wildlife legislation results in accurate transposition of the relevant EU directives and the outcomes of case law.

Implementation and enforcement of the laws protecting wild birds has fallen far short in Ireland of what is required to stem the crisis our wild birds are facing. The biodiversity crisis will worsen with the effects of a changing climate.

Our concerns about law implementation and enforcement range from inadequate environmental assessment including Appropriate Assessment under Article 6.3 of the Habitats Directive. Too often our staff have reviewed Natura Impact Statements to find that:

- Bird survey work is inadequate and not in line with standard methodologies (or no national methodologies have been developed).
- Bird survey work is good and the findings show a clear reason why a development should not proceed due to the impact to the bird conservation interests at the SPA but the conclusion of the Appropriate Assessment says that there will be no significant adverse impacts to the conservation interests at the site.
- Inadequate or completely lacking cumulative impact assessment.

- Part 8 planning applications at local authority level where developments are screened out for assessment under Article 6.3.
- Inadequate assessment of sectoral policies and programmes including for forestry, those relating to the Common Agriculture Policy, fisheries policy, aquaculture policy and renewables.
- There is inadequate environmental assessment of activities such as hunting and recreation at Natura sites, and lack of management of sites for the benefit of the conservation interests which ties in with the failures to implement the law, including achievement of Favourable Conservation Status for animals and habitats and Favourable Reference Value for birds.

3. A need for politicians and ministers to be aware and understand the implications of proposals to amend Irish legislation which aims to protect and conserve wildlife.

In 2015, a Review of Section 40 of the Wildlife Act was commissioned by the Government. This review was focused on the dates regulating the cutting and burning of vegetation. It spurred conservation and environmental organisations to campaign for two years to ensure that the basic legal protections for wild birds during the breeding period were not weakened. This campaign spawned a petition which is still open and has been signed by 34,217 people. In 2019, Dáil Éireann declared a climate and biodiversity emergency in Ireland and a Citizens' Assembly on Biodiversity Loss was commissioned. Civil servants need to ensure that politicians are aware that the laws protecting wildlife and habitats should not be weakened. BirdWatch Ireland and other organisations invested a lot of time and energy into campaigning and advocacy to defend the basic legal protections for wild birds during the Heritage Bill campaign.

4. Investment in research and bird survey and monitoring.

As well as reviewing, amending and updating the Wildlife Act, BirdWatch Ireland recommends that government invest in additional research, surveys and monitoring to fill the gaps in the knowledge on the ecology of birds in Ireland. It is important that relevant research (e.g. nest record scheme and breeding bird surveys) is commissioned systematically to determine the effects of climate change on the timing and outcomes of breeding.

We also recommend that government commission a Nest Records/Monitoring Scheme. This would provide invaluable information about our hedgerow breeding birds in Ireland, helping us track changes in breeding success and correlate these with changes in the wider environment. In particular, it would generate important data on basic breeding biology to include incubation and fledging periods and productivity rates. In addition, we recommend that government fill the gaps and develop standard methodologies for surveying wild birds. BirdWatch Ireland staff is happy to help government in this regard.

Topics covered in this submission

1. Wildlife legislation must be compliant with the Nature Directives
2. Points relating to the Wildlife Act (as amended)
3. Penalties for breaches of Wildlife legislation

4. Birds and Habitats Regulations 2011
5. Hedgerows
6. The need for legislation to support a Wildlife Crime Unit
7. Poison
8. Open Seasons Order
9. The taking of Peregrine chicks from the wild.
10. Invasive and non-native species
11. Technologies
12. Predator control

1. The State must ensure that Ireland's wildlife legislation is compliant in legislation and implementation with the legal requirements of the Birds Directive

The articles of the Birds Directive are relatively simple to understand, and clarifications have been provided through case law, especially through the European Court of Justice. The relevant sections of the Wildlife Act that pertain to the protections for wild birds, on the other hand, are not that easy to follow.

There is a need to provide clarity on Ireland's general system of protection for wild birds as per Article 5 of the Birds Directive.

BirdWatch Ireland has long been concerned about the inadequate transposition of Article 5 of the Birds Directive into national legislation. Article 5 of the Birds Directive states that:

"Member States to take the requisite measures to establish a general system of protection for all species of birds referred to in Article 1, prohibiting in particular:

- (a) deliberate killing or capture by any method;*
- (b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests;*
- (c) taking their eggs in the wild and keeping these eggs even if empty;*
- (d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive;*
- (e) keeping birds of species the hunting and capture of which is prohibited".*

We call on government to outline in legislation the articles and regulations which establish a **general system of protection for all species of wild birds in Ireland**. It is currently not clear. This clarity is required so that the necessary laws are presented in a way which highlights the State's intent to protect wild birds and the requirement for competent authorities to do the same, and so members of the public are aware. Currently when looking at the Wildlife Act (as amended) and the Birds and Habitats Regulations, it is not clear at all what articles/regulations specifically refer to the general system of protection for birds. A 'system' suggests an organised whole and this is far from the case when it comes to examining and interpreting the legislation, which may or may not reflect a general system of protection for birds.

In addition, the word 'deliberate' as used in Article 5 of the Birds Directive, and clarified in any case law, should be used in Irish wildlife legislation as opposed to 'willful' as currently listed in the Wildlife Act.

On the basis of the approach taken by the European Court of Justice in cases C-103/00 and C-221/04, the following definition could be proposed: “Deliberate” actions are to be understood as actions by a person who knows, in light of the relevant legislation that applies to the species involved, and the general information delivered to the public, that his action will most likely lead to an offence against a species, but intends this offence or, if not, consciously accepts the foreseeable results of his action.

In other words, not only a person who fully intends to capture or kill a specimen of an animal commits an offence, an offence is also committed by a person who might not intend to capture or kill a specimen but is sufficiently informed and aware of the consequences his action will most likely have and nevertheless performs the action, leading to the capturing or killing of specimens (e.g. as an unwanted but accepted side-effect), with reckless disregard of the known prohibitions (conditional intent). It goes without saying that negligence is not included in the meaning of “deliberate”¹.

In addition, case law clarifying deliberate and intent should be included in the updated legislation to protect wildlife. In the Caretta Case C-103/00 (paragraph 37), the Court referred to the element of ‘intent’, observing that: ‘the use of mopeds on the breeding beaches was prohibited and notices indicating the presence of turtle nests on the beaches had been erected. As regards the sea area around Gerakas and Dafni, it had been classified as an absolute protection area and special notices had been erected there.’ [According to the Court](#), the fact that, despite the information available to the public on the need to protect these areas, mopeds were used by people on the beach and pedalos and small boats were present in the surrounding sea area constituted deliberate disturbance of the turtles during their breeding period for the purposes of Article 12(1)(b). Thus, the Court ‘seems to interpret the term “deliberate” in the sense of conscious acceptance of consequences’².

In order to assist in helping with the clarification of the word ‘deliberate’, we suggest that the following is taken into account in implementation of the law:

More stringent use of the precautionary principle is required. Such an approach is founded on Article 174 of the EC Treaty, according to which “Community policy on the environment shall aim at a high level of protection” and is based on the precautionary principle and on the principle that preventive action should be taken. Preventive measures anticipate the threats and risks a species may face and are particularly important in preventing deterioration or destruction of breeding sites or resting places of Annex IV(a) species (Article 12(1)(d)). Preventive measures that at the same time ensure effective implementation of the prohibitions in Article 12 “on the ground” could include, for example:

- Information campaigns to raise awareness among a general or targeted public (e.g. landowners etc.) of the protection requirements for certain species.
- Action to have species protection considerations taken into account by relevant economic sectors interfering with Annex IV species (e.g. agriculture, forestry) to avoid the negative

¹ (Commission Notice C(2021) 7301) : Guidance document on the strict protection of animal species of Community interest under the Habitats Directive Section 2-31 available here [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=PI_COM:C\(2021\)7301](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=PI_COM:C(2021)7301)

² Ibid section 2-32

impacts of certain land-use practices. This could include training, codes of conduct, guidance documents, or the adaptation of forestry or agricultural plans and best practice or administrative procedures.

- Active prevention of likely disturbances (e.g. restricting access during sensitive periods to avoid disturbance).
- Inspections.
- Preparation of national conservation and management plans, which could set out in detail the measures mentioned above and provide practical guidance to local/regional authorities, affected interest groups, etc. in effectively implementing provisions for specific species.

BirdWatch Ireland undertook late nesting bird surveys in 2016 and 2017 (reports attached to this submission) in a number of counties to determine what if any birds nested late in the season. These findings showed that several bird species nest well into September. This type of data should inform the 'general system of protection' for breeding birds as set out by Article 5 of the Birds Directive. Derogation from this system should only be allowed under the strict conditions of Article 9.

2. Points relating to the Wildlife Act (as amended)

The State should remove the exemptions in the Wildlife Act which undermine implementation of Article 5 of the Birds Directive. Article 9 of the Birds Directive covering the strict criteria for derogations from Article 5, general system of protection, should be the only process through which exemptions are allowed.

Section 22 of the Wildlife Act (enforcement of protection of wild birds): Section 22(2) contains a range of exemptions to the general system of protection of birds which do not comply with Article 9 of the Birds Directive - Derogations.

- There should be no such thing as a *Third Schedule*: cherry picking which birds are not afforded protection under some circumstances. All wild birds are protected unless a derogation to allow legal killing is applied for or the species is a huntable species.
- Within the Wildlife Act the term the 'ordinary course of agriculture or forestry' is used as an exemption but there's no such reference to this in the derogation articles of the Birds or Habitats Directives. This should be addressed. Destruction of the nests of ground nesting birds through agricultural operations is a threat to a number of Red-listed species, particularly breeding waders, which are not afforded protection through the Natura network.
- Section 22(5)(g) of the consolidated Wildlife Act says that it is not an offence to destroy or remove any such nest which is built in or on an occupied building [unless the nest contains the eggs or young of a protected wild bird]. However, the Birds Directive affords legal protection for *all* nests, with or without eggs or young. In order to protect the nests of wild birds, especially Swifts and Sand Martins, where loss of nest sites has been shown to be a key factor in declines. The Section 22 (5)(g) exemption for these and possibly other species should be removed.

Swifts and Sand Martins return to the same nest site year after year. In addition, the European Court of Justice has established that the protection of nests applies year-round: “The prohibitions set out in Article 5(b) and (c) must apply without any limitation in time. Uninterrupted protection of the birds’ habitat is necessary since many species re-use each year nests built in earlier years. To suspend that protection throughout a particular period of the year cannot be considered to be compatible with the abovementioned prohibition.” (C-252/85, Commission v. France).

Section 24: Needs to be revised and brought into line with Article 7 of Birds Directive as regards hunting. In addition, it should be specified either in the Wildlife Act or the Birds and Habitats Regulations that hunting activities should be assessed for the effect of disturbance.

Section 27: Remove the time limits of one and two months of the suspension of hunting because of severe weather. Under a changing climate with an increase in extreme weather events, it is a necessary precaution to allow flexibility to protect wild birds.

Sections 28 and 29: These sections deal with firearms and the granting of licenses for hunting. Where an application for a license is made to hunt/kill a species on the Open Seasons Order or any list compliant with huntable species as specified by the requirements of the Birds Directive, and where the license refers to a species in specific wetland areas, the applicant should be required to provide satisfactory evidence that the user and the firearm is using shot free from lead.

Section 30 foreshore: Many of Ireland’s Special Protection Areas for birds are water-based and include estuarine sites. Section 30 of the Wildlife Act should be amended to include an assessment of hunting as an activity which could cause disturbance to non-huntable bird conservation interests of the SPAs.

The granting of any license for killing a wild bird must consider the conservation status of the species. Various sections of the Wildlife Act are applicable here.

Section 34 (3) (c) using nets to capture hawks and owls lawfully for falconry.

Section 40: There should be no weakening of this section of the Wildlife Act (e.g. changes to the dates that result in less protection for breeding birds and other wildlife) and it should be clearly explained/addressed that there is a legal requirement to protect breeding birds as per Article 5 of the Birds Directive.

As part of our research into the timing of breeding of wild birds late into the season, BirdWatch Ireland has found that some bird species nest well into September including Red-listed species such as Yellowhammer which nest in hedgerows. Please see attached BirdWatch Ireland’s 2017 and 2018 Late Nesting Bird reports summarizing the research.

Section 40(2): Exemptions from the ban on cutting and burning of vegetation between March 1 and August 31. This section provides exemptions for the ‘ordinary course of agriculture³, forestry,

³ <https://www.agriland.ie/farming-news/fci-contractor-and-farmer-win-hedge-cutting-court-case/>

for public health and safety, fisheries, road construction and building works but there is no linkage with the requirements under Article 5 of the Birds Directive to protect wild birds and this needs to be amended. In particular, the requirement to protect nests especially during the period of breeding and rearing of chicks is not directly linked to this and nor do we believe that there is enough public awareness on the need to seek a derogation under Article 9 from the requirements of Article 5.

One of the topics that we have received a lot of calls regarding is the removal of trees and hedgerows in the course of development works for buildings and housing estates, especially during March 1 and August 31. There is an exemption for these works as part of Section 40 exemptions, but it does not preclude the requirement to adhere to rules regarding nest protection. Locals get in touch and express anger and heartfelt concern and loss, especially if they have memories of birds nesting in a particular area.

Section 41(1): Actions that can be taken in the event of damage caused by wild birds are very loosely defined. It outlines an extensive number of reasons for which the Minister can authorise the capture or killing of a wild bird or animal due to damage, but it does not provide sufficient detail regarding how these decisions are made, including how “damage” is defined or the evidence that an applicant must provide. The Minister has the power to authorise the steps that can be taken in the event of damage caused by wild birds “as he thinks appropriate to stop the damage”. There is a threshold for damage in the Birds Directive for some grounds for derogations. In the case of damage to crops, livestock, forests, fisheries and water and derogations under Article 9 can only be granted for serious damage. The revised legislation should provide clear details on how a Minister makes these decisions, as derogations can only be granted to prevent serious damage, not just any damage.

Section 42: This section of the Wildlife Act outlines derogations from the requirement to protect wild birds and is linked with Regulation 55 of the Birds and Habitats Regulations. In addition, the European Communities (Birds Declarations) Regulations 2023 SI 576/2023 is not in line with Article 9 of the Birds Directive. Perhaps it should be removed altogether if Regulation 55 is the rule which legislates for derogation as per the Statewide declaration of 2024. In addition, SI 576/2023 was published which appears to give effect to Article 9. It is not clear why there are three pieces of legislation, the differences between them and different processes (e.g. Section 42 licenses vs State Wide Declaration).

BirdWatch Ireland staff sat on the Government’s Gull Committee of stakeholders to discuss issues relating to gulls nesting in urban centres. As part of this process, Government commissioned some analysis of the legal situation as regards the States current licensing processes for the removal of Gull eggs and nests and compliance with the Birds Directive. The questions submitted to a state appointed legal professional and his response are attached. It is clear that the State’s processes to derogate from the general system of protection for birds are not in line with the Birds Directive.

The Statewide Declarations should be brought into line with the Birds Directive and European Union case law. We have highlighted this in numerous submissions to the NPWS over the years.

BirdWatch Ireland is of the view that the derogation process under Article 9 of the Birds Directive, coupled with the case law, is fit for purpose and should be implemented where needed and under the strict requirements outlined in that article. However, as far as we are aware, the State has failed to implement Article 9 correctly.

In addition, as was spelled out by the [Aniar report of 2018](#)⁴, In this respect, it is imperative that there is (1) routine and ongoing monitoring of the status of the species on the list, and (2) sufficient flexibility in future protocols to ensure that appropriate actions may be taken to ensure that bird populations nationally are not impacted by this process.

We call on Government to put in place the resources to properly implement this article and the rest of the articles of the Birds Directive.

3. Penalties for breaches of wildlife legislation

It is not evident where the fines are listed in the Wildlife Act for illegally killing a wild bird or for breaches of Section 40 including removal of hedgerows during the bird breeding period. A review of all fines and jail terms in the Act should be undertaken to ensure that they are a deterrent. Currently, some judges require a convicted person to just issue a donation to a wildlife charity in lieu of a fine or jail term. The penalties for breaches of the Wildlife Act should be sufficient as to be a deterrent.

Habitat restoration and reinstatement should be a requirement as a penalty if a habitat is removed in breach of the law. This should apply to all legally protected habitats. Habitats should be reinstated to the extent that there is a net gain for biodiversity.

It should be noted that Ireland opted out of the updated Environmental Crime Directive (Directive 2008/99/EC) which sought to specifically address this very issue of penalties, providing for penalties for both legal persons and natural persons and imposing an obligation on Member States to provide for “effective, proportionate and dissuasive criminal penalties”. The basis for the opt out being that these matters should, according to Ireland, be dealt with at national level. As such, this places an extra onus on the Irish Government to urgently address this and bring us into harmony with the approach taken in other Member States that are now bound by the updated law.

4. Birds and Habitat Regulations 2011

Suggest the use of one clear set of rules for the protection of wild birds and habitats as opposed to the Wildlife Act and the 2011 Birds and Habitats Regulations which appear to conflict.

In Regulation 15 of the 2011 Regulations *Identification and notification regarding particulars of candidate special protection areas*, the regulations refer to “*the species referred to in Article 4*” of the Birds Directive. Clarification is required in the regulations to ensure that non-Annex 1 migratory species are also included and that sites are designated for them.

⁴ Review of the Derogation Process under Article 9(1)(a)
<https://www.npws.ie/sites/default/files/general/aniar-final-report-060918.pdf>

5. Hedgerows

All hedgerows should be protected as high nature value linear features in the Irish landscape. We suggest that Government develop a law that protects hedgerows along the lines of the Protection of Hedgerows Bill 2024.

6. The need for legislation to support a Wildlife Crime Unit

A recurrent theme in BirdWatch Ireland's critique of the Wildlife Act is the low level of enforcement. [Forty-three prosecution cases were initiated by NPWS in 2023](#) for alleged breaches of wildlife legislation, a 39% increase since 2022, and this is certainly something that we absolutely commend. However, this is only the tip of the iceberg and many more incidences of wildlife crime undoubtedly went undetected.

BirdWatch Ireland has repeatedly voiced concerns about the capacity and resourcing of NPWS to monitor breaches of the Wildlife Act and carry out enforcement activities. Additionally, the initiation of wildlife crime cases and rates of conviction are higher in some locations than others. These issues are linked to a general lack of training and resources in the area of wildlife crime in both the NPWS and An Garda Síochána, and difficulty in gathering sufficient evidence on certain forms of wildlife crime. To address this, BirdWatch Ireland would like to see the State revive its plans to establish a Wildlife Crime Unit to enforce legislation, a widely held view; further, we would recommend that a statutory basis for this Wildlife Crime Unit be enshrined in the Wildlife Act. In addition to enforcement, the Unit could also be tasked with inspection, investigation and compliance promotion. The revised legislation should also provide more explicit guidance on the specific powers that NPWS rangers and the Gardaí possess and the training that they require in relation to wildlife crime.

In rare cases where there are prosecutions over lack of compliance with the Wildlife Act, the penalties set down in the law are far too low, usually taking the form of a minor fine or donation to charity. This sends a message that wildlife crimes are not serious offenses and does nothing to discourage others from offending. In fact, some will knowingly violate the law, treating the low penalties as another operational cost. If penalties are to be effective, it is vital that the new legislation includes revised penalties for wildlife crimes which are proportionate and consistent but enough to act as a deterrent. In some instances, non-financial penalties should also be considered including the forfeiture of firearms and dogs.

7. Poison

Ireland is an anomaly compared to many other European countries in relation to some poisonous substances, including the extremely hazardous carbofuran. It is illegal to buy, sell or use carbofuran - but there remains an absence of clearly defined legislation regarding its possession and where enforcement responsibility lies. This confusion would suggest that there is nobody taking responsibility for monitoring carbofuran possession in Ireland.

This is despite years of calls for the establishment of clear legislation, and the fact that the NPWS-led RAPTOR (Recording and Addressing Persecution and Threats to Our Raptors) protocol has reported that [“carbofuran continues to be one of the primary poisons detected annually”](#). Carbofuran has the potential to cause mass wildlife destruction - [as illustrated in Timoleague in 2019 when 23 Common Buzzards were fatally poisoned with the substance](#) - while it is also highly toxic to humans and the wider environment.

As it is difficult to catch people in the act of buying, selling or using carbofuran, strong and clear legislation around possession is sorely needed. The [Possession of Pesticides \(Scotland\) Order 2005](#) clearly outlines that the possession of carbofuran and other hazardous substances is illegal and this has made it easier to secure wildlife poisoning convictions.

[According to the NPWS](#), since carbofuran products were banned for use in the EU in June 2009, carbofuran products have been considered “hazardous waste” and the possession of hazardous waste for more than six months is unauthorised. However, while the NPWS states that the EPA is the regulatory authority for hazardous waste, the [EPA has stated that this is not their role](#).

8. Open Seasons Order

The Wildlife legislation must include clearer instructions for the criteria the Minister must use to include species in and remove species from the Open Seasons Order list.

Following consultation in 2023, to which [BirdWatch Ireland made a submission](#), the Minister removed four species of birds from the Open Seasons Order: Scaup, Goldeneye, Pochard and Pintail. This was a welcome development, because these species have experienced significant decline in their populations. However, it is disappointing that two additional species that we recommended for removal - Shoveler and Golden Plover - remained on the list though the science clearly shows very significant declines in those populations also. The apparent inconsistency in following scientific advice, or the “picking and choosing” of which data to follow and which to ignore, is concerning, and should be precluded by the inclusion of stricter rules in the Wildlife Act to govern the basis on which such ministerial decisions can be made. It is worth noting that 14 of the 21 species of wild bird that can be hunted in Ireland are listed as ‘Red’ or ‘Amber’ in [Birdwatch Ireland’s Birds of Conservation Concern Ireland report](#) and 14 that are the subject of national-level concern, [as outlined in NPWS’s 2019 Article 12 report to the European Commission](#).

It is also vital that legislation specifically provides for more frequent review of the Open Seasons Order and that changes be made in close consultation with conservation and hunting organisations. 2023 was only the second time in 30 years that species have been removed from the Open Seasons Order, despite clear scientific proof of serious declines in a number of species on the hunting list. Legislation must mandate the proper consideration of such scientific evidence. Regular reviews are also particularly needed in light of the ongoing threat of Highly Pathogenic Avian Influenza (HPAI) and the rapid negative change that could occur in a population as a result of an outbreak. The Minister should also have the power in any revised legislation to suspend the Open Season in areas experiencing an outbreak of Avian Influenza or other serious and highly contagious avian disease or pathogen. Decisions with regards the risk from HPAI and the

potential benefits of suspending the Open Seasons order in a specific area or regarding particular species, should be made using best expert opinion at the time, noting that each outbreak and iteration of these viruses presents different challenges and impacts.

Thirdly, under the legislation, the Minister can limit the number of each species hunted. This power is not exercised at present, nor is there adequate data collected to allow this to be monitored. Although some bag data is collected on a voluntary basis, a much more robust compulsory system is required and support must be provided to hunting organisations to do this. More generally, hunting for wild birds should become more flexible in terms of regional and time-based decisions. The populations of certain species would benefit from having a narrower and later window in which they can be shot, for example areas where scarce breeding species such as Shoveler are breeding. Alongside changes to legislation around hunting, the network of wildfowl sanctuaries where birds are safe from shooting and associated disturbance should be expanded and the regulations governing them should be strengthened.

9. The taking of Peregrine chicks from the wild

Another problematic area with the current Wildlife Act is the annual “Peregrine Draw”⁵, where falconers are invited to submit applications to win the right to take wild Peregrine Falcon chicks from their nests. This is a clear illustration of Ireland’s failure to meet requirements under Article 5 of the Directive which prohibits the deliberate destruction of nests or removal of eggs from nests.

The Peregrine draw makes no contribution to the conservation of birds, may negatively impact a local population of the species and is not something that the State should support or enable. We recommend that this is removed completely.

10. Invasive and non-native species

Regulations 49 and 50 of the Birds and Natural Habitats Regulations 2011 prohibit the introduction, dispersal, trading and keeping of certain non-native species (including their eggs) into the wild in Ireland without a license. The EU Invasive Alien Species Regulation also includes restrictions on EU member states keeping, importing, selling, breeding, growing and releasing invasives into the environment. Under EU law, Ireland is required to prevent unintentional introduction of invasive species into the country, take measures for the early detection and rapid eradication of these species, and manage species that are already widely spread in their territory. BirdWatch Ireland welcomes the announcement from the Minister in 2023 that [new legislation dealing with alien species was at an advanced stage, while work was ongoing on a National Management Plan for Invasive Alien Species](#). This new legislation should help to improve the regulation of EU law and needs to be advanced with urgency. In the meantime, Ireland should do more to mitigate the negative impacts of invasive species distributed in Ireland, which threaten our native wild birds and biodiversity.

There needs to be some obligation on the State within the Wildlife Act to prevent the establishment of non-native species, wherever possible. Invasive species can have devastating consequences.

⁵ <https://www.npws.ie/licencesandconsents/possession/birds-of-prey>

[Ring-necked Parakeets are just one recent example that BirdWatch Ireland has raised publicly.](#)
The cost of managing and controlling invasive species is significant, [costing the Irish economy €2.6 million a year according to the National Biodiversity Data Centre.](#)

It is concerning that the current wildlife legislation affords some non-native species the same protection as native wildlife. All deer, including non-native Sika and Sika hybrids, are protected under the Wildlife Act. We believe this protection is unwarranted, especially given the significant resources allocated to safeguard these deer. Deer overpopulation in Ireland negatively impacts biodiversity, native woodlands and human health and safety, with deer being vectors for Lyme Disease-carrying ticks and a road safety concern. When it comes to decisions on conservation basis, like the control of scarce and native predators, effects on non-native game bird species, like Red-legged Partridge or Pheasant, should not count. Such risks should be accepted as part of the recreational shooting of non-native species.

The Wildlife (Amendment) Act 2000 also strengthens the legal basis for controlling the introduction of potentially invasive alien species, but it is under the Regulation on the Control of Importation of Wild Animals and Wild Birds 1989 that the importation of live wild animals or birds is subject to licence by the Minister. The legislative control systems for importing species is not clear, and this is how the plants are imported from nurseries in continental Europe or Asia, as was the case for the [Processionary Moth](#) in 2023. There needs to be proper biosecurity checks introduced under the revised Wildlife legislation.

11. Technologies

The law around photography and nesting birds is flouted in Ireland and not properly enforced. It is very strongly enforced in other European countries because of the impacts of disturbance to breeding attempts and hatching and fledging success. The law around disturbance and nest photography needs to be made much clearer, including what the licensing procedures are to get a license for such photography. Disturbance by tourists, including photographers, is a major issue at seabird colonies. The new legislation should also include stronger regulations on the minimum distances that boat tour operators must maintain from colonies and the amount of time spent in their vicinity.

On the subject of licenses, this review should seek opportunities to streamline the application and licensing process where possible, particularly in relation to conservation and monitoring efforts. For example, BirdWatch Ireland staff must apply for three separate licenses annually when carrying out monitoring and ringing efforts at tern colonies annually - one each for monitoring of nests, photography and ringing. It would benefit both applicants and NPWS staff if these could be streamlined into a single application and license, not least because the assessment criteria and reporting requirements all have significant overlap.

The Wildlife Act, as they currently stand, do not deal specifically with the use of drones and the potential for significant disturbance to breeding birds and other wildlife arising from their use in uncontrolled situations. While the application of drone technology brings many benefits and new possibilities with regards bird surveys and monitoring, their use in this regard must be by trained

and licensed individuals. The risks with this and other emerging technologies is that when drones are used by untrained and unlicensed individuals who are also unaware of the potential disturbance to sensitive wildlife and because of this offer new challenges for conservation because they can access previously inaccessible areas. Civil aviation is well covered by legislation, as is the guidance about how close people are permitted to approach nests, but there is little to prevent drones from causing major disturbances to wildlife.

Thermal imaging binoculars, now cheaply and widely available, are also cause for concern. They make it very easy for poachers and egg collectors to find birds nests or roosting birds, and it does not require any kind of field craft or skill. The efficiency of these technologies can be game-changing from a conservation point of view, helping conservationists to find birds, locate nests and improve efficiency when controlling predators as part of conservation projects. However, these technologies can also be mis-used and used for poaching or hunting. Our colleagues in the RSPB in the UK believe use of such technology has been central to the [illegal killings and suspicious disappearances of raptors in areas of Scotland](#) in recent years. There needs to be further regulation around access to these technologies. However, given the ease of online purchase, which makes it challenging to prevent access, we strongly recommend that the legislation be updated to grant NPWS rangers and Gardaí the authority to seize this equipment when it is suspected it is being used for illegal hunting purposes.

Alongside this, work must be done to ensure that the keepers, bird ringers and other conservationists can continue to operate without too much red tape preventing them from doing their job.

12. Predator control

BirdWatch Ireland experiences issues around the protection of ground nests and bird sites, and protected mammals (badgers, pine marten and otters) sometimes need to be removed for conservation purposes. There is often a lot of hesitancy around granting a license to remove protected mammals that impact ground nesting birds. However, there needs to be some mechanism by which conservationists can prevent these animals from destroying nests. For instance, the establishment of a review system whereby conservationists can apply for a license and can appeal an application that has been refused. This should involve a panel of individuals, e.g. an NPWS panel of staff.

Conclusion

We must do all we can to ensure that the basic protections for wild birds, the legislation, is fit for purpose, compliant with the EU environmental acquis (including environmental assessment legislation) and critically, **that investment is made in its implementation and enforcement at every level of government.**

Finally, we ask that whenever new additions or amendments are made to the Wildlife Act or Birds and Habitats Regulations, that a consolidated versions of the laws are prepared as soon as possible and published.