

**COUNCIL FOR NATURE CONSERVATION
AND THE COUNTRYSIDE**
An Advisory Council to the Department of the Environment
4th Floor Clarence House, 10-18 Adelaide Street, Belfast, BT2 8GB
Tel: 028 9054 0217 secretariat-hillst@doeni.gov.uk

16 Mar 2011

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Dear Alex,

**INFRACTION CASE REGARDING TRANSPOSITION OF THE WILD BIRDS
DIRECTIVE**

CNCC is grateful of the opportunity to contribute to this issue. As you are aware, the Department's duty to declare ASSIs flows from the Environment Order 2002;

Declaration of ASSI

28. - (1) Where the Department after consultation with the Council for Nature Conservation and the Countryside ("the Council"), is satisfied -

- (a) that an area of land is of special interest by reason of any of its flora, fauna, or geological, physiological or other features, and
- (b) that accordingly it needs to be specially protected,

the Department shall make a declaration that the area is an area of special scientific interest.

(2) A declaration under paragraph (1) shall specify -

- (a) the flora, fauna, or geological, physiological or other features by reason of which the land is of special interest, and
- (b) any operations appearing to the Department to be likely to damage that flora or fauna or those features,

and shall contain a statement of the Department's views about the management of the land (including any views the Department may have about the conservation and enhancement of that flora or fauna or those features).

(3) Where the Department makes a declaration under paragraph (1) in relation to any land, it shall give notification of that fact -

(a) to each district council in whose district the land is wholly or partially situated;
and

(b) to every owner and occupier of any of that land.

We have not been consulted by the Department, but we feel that the approach suggested in DALO letter CQ219/10 of 3 Mar 11 letter carries a number of risks.

Option 1 - Designation as ASSI

- Ornithological criteria for ASSIs have not been published/consulted upon, so designation would be probably be vulnerable to challenge (as was the case with the declaration to designate Lisnarragh) on the grounds of scientific rigour
- Likely to vigorously opposed by landowners, particularly as much of the area has potential wind farm sites
- Impact on declaration programme for other ASSIs is likely to be severe because of the large number of landowners involved in the SPA areas

Option 2 – amend legislation

- Notwithstanding the comments above re consultation, the legality of giving ASSI status without full consultation is questionable, particularly as it would have to apply to all 17 SPAs.
- “Formalising what is already in place” (top of p. 3) is incorrect, as ASSIs have management plans, whereas SPAs do not
- Without management plans, it is far from certain what amending the SPA legislation will actually achieve. Indeed, it may serve to damage the status of ASSIs by implying that the Department is not committed to their total protection.

It is unclear why the Department thinks that the proposal will satisfy the Commission if, as the letter states, it “will not introduce any new implementation obligations or any additional burdens on business, civil society or the Department and the amending legislation will simply prescribe in legal terms the process currently followed.” Article 4.1 of the Birds Directive requires;

“The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution”.

We believe that this has been interpreted by the Commission to mean that habitat management is a specific requirement of this Article. We note the ECJ ruling in case C-96/98 (Poitevin Marshes) relates to both protection from damage to habitats, and a mechanism to ensure correct management throughout the designated areas.

We also note that the letter points out the risks associated with timeframes involved with introduction of the NI Marine Bill. We have expressed our concern about the timescale for implementation of the Marine Bill and attendant work streams to the Department on a number of occasions and believe the resources currently allocated are inadequate to meet the deadlines.

It is clear that there is no simple solution to this problem and that both options will have a serious impact on the Department’s ability to designate, monitor and protect the most

important examples of our natural heritage. Northern Ireland already has the lowest percentage of its land area designated in the UK and there is real danger that we will not be able to reach the long-term goal agreed at Nagoya to protect 17% of land area. We would urge the Committee for the Environment to make the strongest possible case for increased resources for the Department to be able to meet their obligations to protect the environment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Patrick Casement', written in a cursive style.

PATRICK CASEMENT
CHAIRMAN