

# **S.I. No. 294/2011 — European Communities (Conservation of Wild Birds (Durnesh Lough Special Protection Area 004145)) Regulations 2011.**

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 21st June, 2011.*

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

1. (1) These Regulations may be cited as the European Communities (Conservation of Wild Birds (Durnesh Lough Special Protection Area 004145)) Regulations 2011.

(2) These Regulations come into operation on 16 June 2011.

2. (1) In these Regulations—

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

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

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

“Minister” means the Minister for Arts, Heritage and the Gaeltacht;

“public authority” means:—

(a) a Minister of the Government;

(b) a local authority within the meaning of the Local Government Act 2001 (No. 37 of 2001); or,

(c) a board or other body (but not including a company under the Companies Acts) established by or under statute;

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

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

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

4. (1)(a) The indicative map contained in Schedule 1 showing the boundary of the Special Protection Area shall be drawn to such convenient scale as the Minister thinks fit and the Minister shall seal the map and shall deposit it in the offices of the Minister.

(b) The Minister may prepare more detailed maps, in such convenient number of separate sheets as the Minister thinks fit, showing the boundary of the Special Protection Area and shall seal each of the maps and shall deposit them in the offices of the Minister. Any dispute involving the boundary of the Special Protection Area shall be determined by reference to maps prepared under this subsection.

(2) The said maps when so deposited in the said offices of the Minister shall be retained in such office and such maps, or true copies thereof, shall be open for inspection free of charge in such offices by any person at any time at which such offices are open for the transaction of public business, and it shall be lawful for the Minister to prepare and supply to any person requesting the same a true copy of the map so deposited with the Minister or any particular part or sheet thereof and to charge for such copy such sum as the Minister may fix.

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

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

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

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

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

(a) on summary conviction to a Class A fine or imprisonment for a term not exceeding 6 months, or both, or

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

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

## **SCHEDULE 1**



## SCHEDULE 2

### DESCRIPTION OF AREA

The area known as Durnesh Lough Special Protection Area 004145 is situated in the county of Donegal being the land and waters enclosed on the map (contained in Schedule 1) within the inner margin of the red line and hatched in red. The area of land known as Durnesh Lough Special Protection Area 004145 is situated in whole or in part in the townlands of Birra, Drumhome, Durnesh, Inishfad, Inishinny (E.D. Ballintra), Killinangel More, Rathfragan and Rossnowlagh Lower.

## SCHEDULE 3

### SPECIAL CONSERVATION INTERESTS

#### Bird Species

Scientific Name	Common Name
<i>Cygnus cygnus</i>	Whooper Swan
<i>Anser albifrons flavirostris</i>	Greenland White-fronted Goose

## SCHEDULE 4

**SITE SPECIFIC OPERATIONS OR ACTIVITIES REQUIRING CONSENT OF THE MINISTER:**

ARC 01: Reclamation, including infilling.

ARC 06: Introduction, or re-introduction, of plants or animals not found in the area.  
[Consent is not required for the planting of crops on established reseeded grassland or cultivated land.]

ARC 09: Construction or alteration of tracks, paths, roads, bridges, culverts or access routes.

ARC 15: Burning, topping, clearing scrub or rough vegetation or reseeded. [Consent is not required for these activities on established reseeded grassland or cultivated land provided it is greater than 20m from a river, stream or floodplain; or greater than 50m from a wetland, lake, turlough or pond.]

ARC 25: Drainage works including digging, deepening, widening or blocking a drain, watercourse or waterbody.

ARC 29: Planting of trees or multi-annual bioenergy crops.

ARC 30: Any activity intended to disturb birds, including by mechanical, air, gas, wind powered or audible means.

ARC 31: Developing or allowing the development or operation of recreational/ visitor facilities or activities, at a commercial scale.



GIVEN under my Official Seal,

16 June 2011.

JIMMY DEENIHAN, T.D.,

Minister for Arts, Heritage and the Gaeltacht.

#### EXPLANATORY NOTE

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

Directive 2009/147/EC (O.J. L 20/7 of 26 January 2010) of the European Parliament and of the Council of 30 November 2009 (“the Birds Directive”) on the conservation of wild birds provides for the conservation of wild birds by, among other things, classifying important ornithological sites as Special Protection Areas. The hyperlink [http://ec.europa.eu/environment/nature/natura2000/sites\\_birds/index\\_en.htm](http://ec.europa.eu/environment/nature/natura2000/sites_birds/index_en.htm) which connects to the useful and informative European Commission Environment (Nature and Biodiversity) website also contains a further link to the text of the Birds Directive.

The effect of these Regulations is to designate a site as a Special Protection Area in accordance with Article 4 of the Directive. The geographical area of the Special Protection Area designated by these Regulations is defined by the First Schedule (a map or maps of the area) and the Second Schedule (a list of the townlands in question / a description of the area). For more detailed maps than those contained in Schedule 1, or for greater detail on boundary delineation, contact should be made with the National Parks and Wildlife Service of the Department of Arts, Heritage and the Gaeltacht by telephoning 1-800-405000 or by viewing the relevant text or map details on [www.npws.ie](http://www.npws.ie).

The bird species cited in the Third Schedule of these Regulations are specified, in accordance with the Directive, in order to ensure their survival and reproduction in their area of distribution. Under Article 5 of the Directive all species of birds are afforded protection from disturbance, capture and damage to nests and eggs, not just the birds listed on Schedule 3 (with the exception of those birds covered under Articles 7 for hunting and 9, where derogations are listed).

Those operations or activities requiring the consent of the Minister listed at Schedule 4 to these Regulations are cited for their potential to cause disturbance or damage to the bird species and their habitats specified in the Third Schedule of these Regulations. Landowners or occupiers should contact the local National Parks and Wildlife Service office of the Department of Arts, Heritage and the Gaeltacht before undertaking any of the works listed at Schedule 4. (See [www.npws.ie](http://www.npws.ie) for contact details). Please note that operations/activities other than those listed at Schedule 4 to these Regulations, such as effluent discharge, planning permission, aquaculture, fishing or forestry require a licence or permission from the appropriate consent authority.

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

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