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**An Comhchoiste um Thalmhaíocht, Bia agus Muir**

**Tailte a Ainmniú mar Limistéir Chosanta Speisialta chun  
Cromáin na gCearc Ghoir a Chaomhnú**

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**Joint Committee on Agriculture, Food and the Marine**

**Designation of lands as Special Protection Areas for the  
conservation of breeding Hen Harriers**



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## **Glossary**

AEOS	Agri-Environment Options Scheme
ANC	Areas of Natural Constraint
BPS	Basic Payment Scheme
DAFM	Department of Agriculture, Food and the Marine
DAHG	Department of Arts, Heritage and the Gaeltacht
DECLG	Department of the Environment, Community and Local Government
CAP	Common Agricultural Policy
DAS	Disadvantaged Area Scheme
FPS	Farm Plan Scheme
GAEC	Good Agricultural and Environmental Condition
GLAS	Green Low-carbon Environmental Scheme
IFDL	Irish Farmers with Designated Lands
IWEA	Irish Wind Energy Association
NPWS	National Parks Wildlife Services
LAES	Locally-led Agri-Environment Scheme
LFA	Less Favoured Area
MS	Member State
PAF	Prioritised Action Framework
REPS	Rural Environment Protection Scheme
RDP	Rural Development Programme
SAC	Special Area of Conservation
SEA	Strategic Environmental Assessment
SFP	Single Farm Payment
SPA	Special Protection Area
TRP	(Hen Harrier) Threat Response Plan





## **Chairman's Foreword**

This Report aims to clarify the purpose and workings of the Hen Harrier Special Protection Area (SPA) designations, to identify the problems relating to their management and to recommend a number of possible solutions.

This Report describes the Hen Harrier SPA designations, outlines the EU dynamic driving the pan European Natura 2000 network and explains the background to the SPA designations. It details the mechanisms by which the designations have so far been co-ordinated and subsidised. It outlines the effect of the designations on the farmers who own the land.

As part of its work programme for 2015, the Joint Committee on Agriculture, Food and the Marine considered the issue concerning the designation of lands as SPAs for the protection of breeding hen harriers as one of its major topics for examination. This was on foot of a submission received from a national representative group of farmers known as the 'Irish Farmers with Designated Lands'. The Committee is cognisant of the fact that the group's main concern is that land designation restricts commercial farming practice resulting in discriminatory financial losses for farmers with designated lands.

The Committee is mindful that the Hen Harrier was a key issue in the judgement of the Court of Justice of the EU in 2007 against Ireland in the 'Birds Case' for failure to provide adequate protection for wild birds and that the Department of Agriculture, Food and the Marine and the Department of Arts, Heritage and the Gaeltacht are currently carrying out their own research addressing the issues raised in the Birds Case.

In our findings, the Committee appreciates the need to address the difficulties experienced by farmers with regard to diminished income and land value. The Committee emphasises that the conclusions and recommendations for dealing with the Hen Harrier designation should be applied equally where a similar designation affects farming and land value.

Finally, I would like to express my appreciation to the Members of the Joint Committee in the compilation of this Report. The Committee is indebted to the assistance of Ms Susan Byrne, and both the Committee Secretariat and Library and Research Services of the Houses of the Oireachtas for their ongoing assistance.

A handwritten signature in blue ink, which appears to read 'Andrew Doyle'.

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Andrew Doyle T.D.  
Chairman

## **1. Introduction**

In 2007, the National Parks and Wildlife Service (NPWS) designated a suite of six SPAs for the purpose of protecting breeding hen harriers<sup>1</sup>.

The Joint Oireachtas Committee on Agriculture, Food and the Marine (hereinafter referred to “the Committee”) is assessing this network of Hen Harrier SPAs (Hen Harrier SPAs). The Committee will make recommendations as to the best way to achieve compliance with the EU Birds Directive - of which the Hen Harrier SPA designations are one element. Its recommendations will also address the issue of the diminished economic potential of land which falls within the Hen Harrier SPA network.

The Hen Harrier SPA network is managed and administered by the NPWS which is part of the Heritage Division of the DAHG. The Hen Harrier SPA network covers a total of 167,297 hectares. In order to create the desired habitat, certain agricultural practices are permitted while others are not. Hen Harrier SPA farmers are required to cultivate the type of habitat necessary for the survival of the Hen Harrier – rough pasture, scrubland and heath. New commercial forestry plantation is no longer permitted on these lands. However, a major conservation concern is that the Hen Harrier SPAs comprise 52% forestry - already planted before the designation of the lands - and now at various stages of maturation.

The Committee has carried out preliminary research into the efficacy of the Hen Harrier SPA designations and its effect on those who farm the land. The farmers’ representative body, known as the ‘Irish Farmers with Designated Land’ (IFDL), presented their case to the Committee in December 2014 and again in July 2015 and outlined their problems and demands<sup>2</sup>.

## **2. Background**

### **2.1 - The Hen Harrier**

The Hen Harrier is amber-listed on the birds of conservation concern in Ireland due to a decline in the breeding population<sup>3</sup> and is listed under Annex I of the Birds Directive. An elegant flier, it has a wingspan of one metre and is light, relative to its size, weighing between 350 and 600 grams.

The Hen Harrier’s typical habitat is described as mainly upland, between 100 and 350m above sea level, on bog, heath, scrub or grassland and land covered with rushes and bordered by hedgerows, as well as forestry at the young, pre-thicket stage.

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<sup>1</sup> In addition to the suite of six HH SPAs designated in 2007 and detailed on page 9 of this Report, two other SPAs are post breeding and roost sites for hen harriers. These are the Wexford Harbour and Slobs SPA (site code 004076) and Lough Corrib SPA (site code 004042). However, the focus of this Report is on the suite of six HH SPAs listed on pg 9.

<sup>2</sup> Meetings of the Joint Committee on Agriculture, Food and the Marine, 16 December 2014 and 23 July 2015

<sup>3</sup> Colhoun, K. & Cummins, S., 2013. *Birds of conservation concern in Ireland 2014-2019* [online]. Available at: <http://www.birdwatchireland.ie/LinkClick.aspx?fileticket=EjODk32LNcU%3D&tabid=178> [accessed on 21.09.2015]



A bird of prey, the Hen Harrier's diet consists mainly of small mammals. It also feeds on small birds.

Hen Harriers are distributed throughout Ireland, with breeding strongholds in Kerry, Cork, Limerick, Clare, Tipperary, Offaly, Laois, Galway and Monaghan. The breeding season occurs between March and September. The Hen Harrier's nest is on the ground because they evolved in open landscapes such as moorland, bog and grassland: heather has been their traditional habitat in Ireland. They need open areas to forage, but much of their natural habitat has been lost to afforestation, scrub/heather/gorse burning and over-grazing. Although Hen Harriers do nest in young forestry plantations, commercial forestry – over time – eliminates their foraging grounds, when the trees reach the thicket stage at between about 10 and 15 years and the canopy closes over<sup>4</sup>.

Hen Harriers in Ireland are usually present all year, but may desert the higher habitats in winter.

Hen Harriers numbers declined considerably in the late 1970s, after that increased slightly according to the first national survey carried out in the late 1990s. The latest survey, in 2010 shows similar national figures to the 2005 survey, but records a serious 18% decline in the numbers of Hen Harriers<sup>5</sup>.

As the Hen Harrier underwent a large decline during the period of 1970-1990, its European conservation status is regarded as unfavourable<sup>6</sup>.

## **2.2 - The EU and the Hen Harrier**

Although it comprises only 5% of the earth's land mass, Europe has a rich and significant diversity of plant, animal life and landscape out of proportion to its size. Few places in the world have such a varied, contrasting and localised patchwork of habitats, wildlife and cultural landscapes in so small an area. The goal of the EU Biodiversity Strategy is to maintain the overall health of these natural ecosystems, because they benefit society as a whole. The consequences of ignoring any degeneration are serious: deterioration in air quality, lack of clean water, more flooding and erosion.

The Birds Directive (2009/147/EC<sup>7</sup>) and the Habitats Directive (92/43/EEC) are the cornerstones of European legislation on nature conservation and are central parts of the drive to halt and reverse biodiversity loss in Europe by 2020.

The Birds Directive provides for the protection of all wild birds and requires MS to take special conservation measures for the most threatened species and for migratory birds through the establishment of SPAs where birds and their habitats have to be maintained in a good conservation status. The Hen Harrier is listed under Annex I of the Birds Directive. The

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<sup>4</sup> Republic of Ireland Hen Harrier Survey 2010: Ruddock, Dunlop, O'Toole, Mee, Nagle

<sup>5</sup> Ibid

<sup>6</sup> BirdLife International 2004 (cited in Wilson-Parr, R. & Tierney, D 2015)

<sup>7</sup> Birds Directive, European Commission:

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0147>

main aim of the Habitats Directive is to achieve and maintain favourable conservation status for habitats and species which are considered at risk. This is to be achieved by designating key sites as Special Areas of Conservation (SACs), and also by introducing protective measures for species considered at risk. Together these protected SPA and SAC sites form the pan-European Natura 2000 network. All MS have such sites, with over 27,000 in total.

The objective of the Birds Directive and Habitats Directive is to ensure that the species and habitat types they protect are maintained, or restored to a favourable conservation status within the EU. The aim is to ensure that species and habitats recover sufficiently to enable them to flourish over the long-term. This is achieved through the Natura 2000 network and the strict system of species protection.

### **3. Natura 2000**

#### **3.1 -The Establishment and Management of SPAs and SACs under the Birds and Habitats Directives**

The criteria set out in Natura 2000 for the establishment and management of SPAs across all MS, includes a provision that ‘the economic, social and cultural requirements and the regional and local characteristics of the area concerned, must be taken into account’<sup>8</sup>. The guidelines also promote the importance of consensus-building amongst all stakeholders and interest groups in order to create a sense of shared ownership and responsibility for the final outcome. The Natura 2000 Management Plans acknowledge that the majority of sites in the scheme are already under some form of active land use. The Directives support the principle of sustainable development: they aim to avoid the exclusion of socio-economic activities from SPA sites, but to find ways for those to operate in a way that also safeguards and supports the species and habitats. There is a six-year status reporting cycle, which obliges MS to monitor sites and provide the European Commission with an overview statement, called a ‘Prioritised Action Framework’ (PAF).

#### **3.2 - Funding**

The main responsibility for financing Natura 2000 lies with each MS. However, the Habitats Directive recognises the need for EU-level support and explicitly links the delivery of the necessary conservation measures to the provision of EU co-financing. Article 8.4 says ‘the Commission shall adopt, having regard to the available sources of funding under the relevant Community instruments.....a prioritised action framework of measures involving co-financing when the site has been designated...’<sup>9</sup>

The EU LIFE Fund has contributed €1.2 billion to conservation across all MS since 1992. Other major EU agriculture and rural development funds also offer opportunities to fund Natura 2000 objectives.

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<sup>8</sup> European Commission: *Financing Natura 2000 – EU Funding Opportunities 2014-2020*

<sup>9</sup> Habitats Directive, European Commission -

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01992L0043-20070101&from=EN>

The EU's Biodiversity Strategy recognises that success depends on full implementation of the Birds and Habitats Directives: completing the network of SPAs and SACs and ensuring adequate protection, management and financing of Natura 2000 sites.

### **3.3 - Current Status**

Natura 2000 currently protects around 18% of land in the EU. The designation of sites is nearly complete, but management and enforcement of protection on sites is less advanced and many sites lack management plans. Natura 2000 has faced criticism from some stakeholders who fear that conservation adversely affects the sustainability of traditional rural communities, unless complimented by adequate long term funding to offset the financial implications for rural communities. A lack of funding is contrary to the requirements of Natura 2000 mentioned previously which requires that the economic, social and cultural requirements be taken into account.

## **4. Hen Harrier SPAs in Ireland**

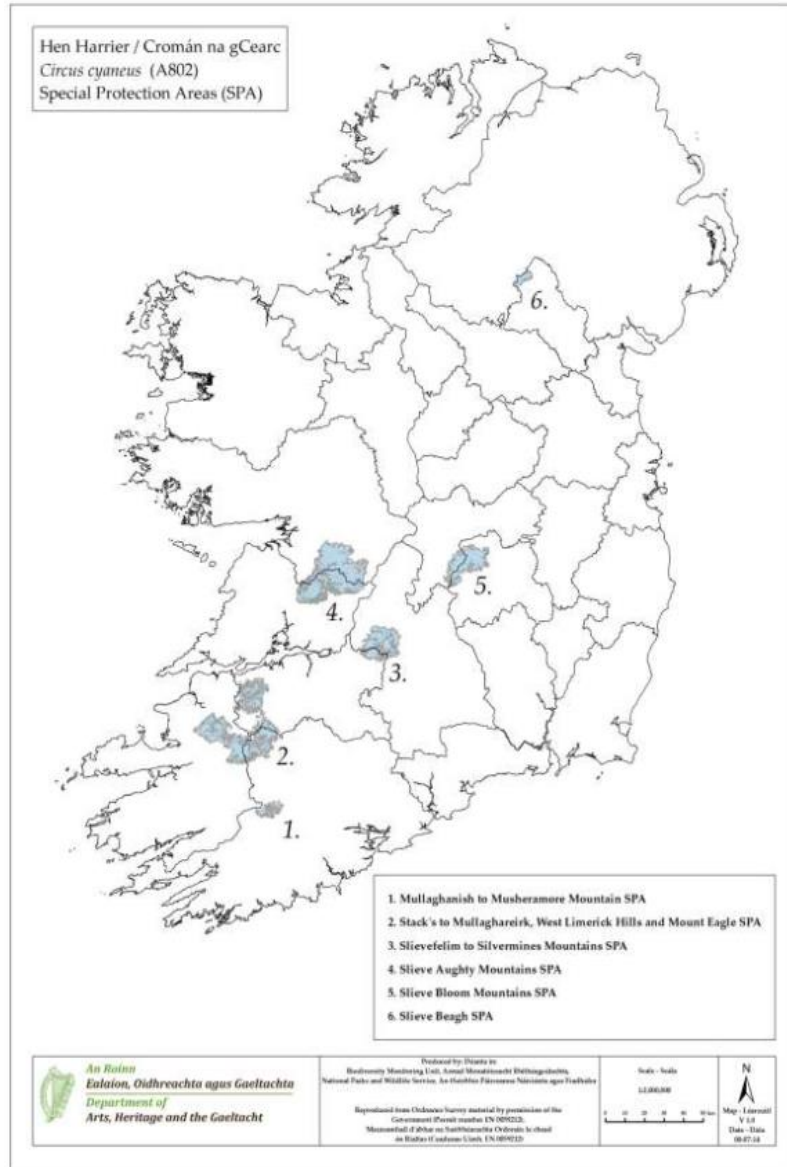
### **4.1 - Overview**

In 2007 the NPWS designated a suite of six SPAs under the Birds Directive for the protection of breeding Hen Harriers. The six sites cover a total area of 167,296ha<sup>10</sup>. They are located in Kerry, Cork, Limerick, Clare, Tipperary, Offaly, Laois, Galway and Monaghan. About 3800 farmers own land in designated areas (an estimated 52% is afforested, about 30% is farmed and the remainder is made up of bog and moorland).

*A pictorial overview of is provided on the following map overleaf.*

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<sup>10</sup> NPWS, 27 August 2015



1.	Mullaghanish to Musheramore Mountains SPA (site code 004162) (Limerick)	4,978 ha
2.	Stacks to Mullaghareirk Mountains SPA (site code 004161) (Cork/Kerry/Limerick)	56,673 ha
3.	Slievefelim to Silvermines Mountains SPA (site code 004165) (Limerick)	20,922 ha
4.	Slieve Aughty Mountains SPA (site code 004168) (Galway/Clare)	59,482 ha
5.	Slieve Bloom Mountains SPA (site code 004160) (Offaly/Laois)	21,784 ha
6.	Slieve Beagh SPA (site code 004167) (Monaghan)	3,457 ha
<b>TOTAL</b>		<b>167,296 ha</b>

Source: Hen Harrier Special Protection Area (SPA) Habitat Mapping Project 2014, DAHG.  
Available online at <http://www.npws.ie/sites/default/files/publications/pdf/IWM83.pdf>

## **4.2 - Management**

The European Commission set the designation criteria for Hen Harrier SPAs as areas where the greatest concentration of these birds are found. The European Commission is the ultimate authority to whom all MS report every six years. There is an obligation on each MS to conserve the Hen Harrier SPAs as suitable areas for the species and not to permit projects where there is clear scientific evidence that such projects will have an adverse impact on the SPA.

At national level, the NPWS has been responsible for setting up the Hen Harrier SPAs. It is the co-ordinating and monitoring authority. The NPWS has been the only agency to devise a dedicated management and subsidy system for the Hen Harrier SPAs.

The Hen Harrier numbers were estimated at between 250-300 pairs in the early 1970s and then underwent a major decline from the late 1970s to 1990s. A 1983 study<sup>11</sup> showed numbers in Wicklow dropping from 20 pairs in 1965 to 2 or 3 pairs in 1982. The study attributes the countrywide decline at this time, mainly to maturation of trees planted in the '40s and '50s government afforestation plan. A report conducted by Ryan Wilson-Parr and David Tierney<sup>12</sup> also notes that entry to the EEC and the subsequent availability of agricultural investment indirectly encouraged the clearing of scrub, heather and gorse from marginal land across the country.

The first national Hen Harrier survey in the Republic of Ireland - carried out from 1998 to 2000 – estimated a national breeding population of 102 – 129 pairs<sup>13</sup>. The subsequent 2005 survey established 132 – 153 pairs. In 2010, the estimation was 128 – 172, although a change in the methodology in 2010, casts some doubt on the numbers. However, the 2010 figures for the combined Hen Harrier SPA network alone showed a decline of 18% compared to 2005<sup>14</sup>. Studies cited in the Wilson-Parr and Tierney Report illustrate that pre-thicket forest - up to between 6 and 11 years of age - is used by the Hen Harrier, but when the canopy begins to close over, it is no longer a suitable habitat. Forestry is emerging as the main issue of contention. A 2012 report<sup>15</sup> also sets out the scientific finding that habitats in excess of 40% forestry are not suitable habitats for the Hen Harrier. Therefore, the 2010 survey estimating that 52% of the total Hen Harrier SPA land is afforested is of real concern for the conservation of the bird.

As of 2015, the Forest Service is not issuing any further afforestation licences for land in the Hen Harrier SPAs. However, the existing forestry within the designated areas continues to

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<sup>11</sup> WJ O'Flynn: Population Changes to the Hen Harrier in Ireland

<sup>12</sup> *Hen Harrier Conservation and the Forestry Sector in Ireland 2015* [online]. Available at:

<http://www.npws.ie/sites/default/files/publications/pdf/HHTRP%20-%20Forestry%20-%20V3.2.pdf>

<sup>13</sup> Norris, Marsh, McMahon, Oliver. 2002. A National Survey of Breeding Hen Harriers in Ireland

<sup>14</sup> Republic of Ireland Hen Harrier Survey 2010: Ruddock, Dunlop, O'Toole, Mee, Nagle

<sup>15</sup> *Optimum Scenarios for Hen Harrier Conservation in Ireland* [online]

<http://www.coford.ie/media/coford/content/publications/projectreports/HEHHARRIERFinalProjectReportJune2012.pdf>

be managed, involving forest road construction, thinning, aerial fertilisation and clear-felling, all of which are noted disturbances.

Hen Harrier SPAs are typically located in areas that are difficult to farm: marginal land on hillsides, scrubland and heath: land that makes a good habitat for the Hen Harrier is generally unsuitable for mainstream agriculture. Given that only about a third of total Hen Harrier SPA area is farmed, commercial forestry has accounted for a significant percentage of farming income in the designated areas. There are huge incentives to plant forest: a subsidy of €510 per hectare for 15 years, tax-free. In addition, land with forestry approval sells for about €4000 per acre, as opposed to an estimated €1500 per acre for Hen Harrier SPA designated land<sup>16</sup>.

In 2007, at the same time as the designation of the six Hen Harrier SPAs, the Forest Service within the Department of Agriculture, Food and the Marine (DAFM) and NPWS initiated a framework, the Hen Harrier Protocol, to allow a certain amount of forestry in Hen Harrier SPAs. Thresholds for annual afforestation were agreed for a 15-year period. The hope was that forest rotation would not have a negative impact on the Hen Harrier population, but this was not the case<sup>17</sup>. Meanwhile, the European Commission intervened, considering the Protocol was subject to the provisions of the SEA Directive, requiring project environmental assessment before implementation. No assessment had taken place in the case of the Hen Harrier. After the 2010 Hen Harrier Survey showed a serious decline in the Hen Harrier, the Protocol was eventually suspended. Another Report, in 2012, showed a link between second rotation pre-thicket forest and a decline in breeding pairs<sup>18</sup>.

### 4.3 - The Farmers and Subsidisation

Since designation of the Hen Harrier SPA network in 2007, there has been only one dedicated management/funding plan for farmers with Hen Harrier SPA designated land. The NPWS set up the FPS in 2006 as a habitat enhancement scheme for a variety of species, including the Hen Harrier. These sites were Natura 2000 sites (SAC and SPA sites) and Commonages (designated and undesignated)<sup>19</sup>. At the time, Hen Harrier SPA farmers had a choice of applying for a subsidy from either the Rural Environmental Protection Scheme (REPS) or FPS. Farmers who were already in REPS received the €2,000 Hen Harrier 'top up'. Many would have elected to stay in REPS, for the duration of that RDP round.

- **National Parks Wildlife Service - Farm Plan Scheme**

The FPS was designed as a habitat enhancement scheme for a variety of species, (including the Hen Harrier) on Natura 2000 and Commonage sites. The Scheme was administered by

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<sup>16</sup> Irish Farmers with Designated Land (IFDL) 2014. *Presentation on Hen Harrier SPA* [online]. Available at: <http://www.oireachtas.ie/parliament/media/committees/agriculturefoodandthemarine/Opening-Statement-IFDL-161214.pdf> [accessed on 22.09.2015]

<sup>17</sup> Republic of Ireland Hen Harrier Survey 2010

<sup>18</sup> *Optimum Scenarios for Hen Harrier Conservation in Ireland*

<sup>19</sup> Communications with the NPWS, 18<sup>th</sup> September 2015

the NPWS and funded entirely from the exchequer. The FPS approach to applicants to the Scheme with Hen Harrier SPAs was to promote a different culture of innovative farming, the idea being that the output - or product – should be the habitat suitable for the Hen Harrier. The FPS provided land management plans and guidelines as well as access to specialist expertise. Farmers with land in the designated Hen Harrier SPAs were incentivised to adopt new farming practices and land management techniques and funded to do so. The FPS did, however, have stricter conditionality than REPS, as per the terms of the Birds and Habitats Directives.

A five year plan, the annual payment under the FPS was intended to compensate the participant for losses suffered or costs incurred due to compliance with the Scheme. Those in the FPS for Hen Harriers were paid at a flat rate of €350 per hectare for the first 40 hectares, €25 per hectare for land between 40 and 120 hectares, and €5 per hectare thereafter.

The scheme closed to new applicants in 2010 for budgetary reasons but payments to existing applicants were honoured. Overall, the FPS supported less than 10% of Hen Harrier SPA farmers. So far the scheme has paid out over €13 million to Hen Harrier SPA farmers.

- **Green Low-carbon Environmental Scheme**

Under the terms of the current RDP round, Hen Harrier SPA farmers are eligible for a Green Low-carbon Environment Scheme (GLAS) subsidy of €7000 per annum. This is made up of €370 per hectare up to a maximum of 13.5 hectares (the basic payment available to all qualifying applicants whether or not they are in designated areas) and a Hen Harrier SPA 'top-up' of €2000 (the cap is 19 hectares). GLAS has been promoted by the DAFM as the most suitable support vehicle for Hen Harrier SPA farmers.

- **Areas of Natural Constraint**

Hen Harrier SPA farmers are also eligible for the ANC payment (replaces DAS and LFA). This scheme involves payments on a per hectare basis up to a maximum of 30 hectares.

- **Single Farm Payment**

Hen Harrier SPA farmers also encounter difficulty with eligibility for the SFP under Pillar 1 of CAP. They are typically unable to meet the DAFM's GAEC on agricultural land maintenance for the SFP on all their designated land because they are required by DAHG / NPWS – under the terms of the Hen Harrier SPA FPS – to keep sufficient areas of designated land in rough pasture, heath and scrubland in order to maintain the desirable habitat.

While scrub was always ineligible for 'area-based payments', compromise on this issue may now be less likely, after an European Commission audit of Ireland's Pillar 1 payments showed an over-declaration of eligible or utilisable agricultural land. As a result, Ireland is now subject to a fine of €64 million.

The CAP Pillar 2 supports through RDP are clearly a vehicle intended by the European Commission for the funding of SPAs. However, not enough effort has been made by Ireland

to harness EU financing and to ensure it is used for its original intended purpose, according to a PAF paper on the EU Biodiversity Strategy, submitted to the European Commission in 2013. It states that a 'lack of coordination and coherence has been identified as a key factor hindering the uptake of EU funds' in this respect<sup>20</sup>. PAF statements are coordinated on behalf of the Government by DAHG, with input from all relevant Departments. They are an element of the obligatory reporting process set out in the Habitats Directive.

There is no question that EU Funding can be drawn down for conservation purposes: the Habitats Directive, Article 8.4 states that EU co-financing measures are available for Hen Harrier SPAs<sup>21</sup>. In fact, Ireland has already benefitted from this provision. However, most of the funds were not used for their intended purpose. In the last RDP round (2007 – 2013), €528 million was allocated to Natura 2000 sites in Ireland. In response to an inquiry from An Taisce in 2013<sup>22</sup>, DAFM stated that only €95 million of these funds had been used for the intended purpose: i.e. for use on Natura 2000 sites. Over €400 million was reallocated 'across the Agri-environment (REPS and AEOS) and LFA schemes in RDP Axis 2'. DAFM said the re-allocation was due to lack of demand from the SPA and SAC farmers: but no measure had been put in place: no scheme created to ensure the funds were channelled into SACs and SPAs. Indeed, the NPWS FPS, which was in operation during this period, was funded entirely from the Exchequer. Despite the existence of the RDP conservation funds, the FPS closed to new applicants in 2010 when the allocated exchequer funds were exhausted. However, payments were honoured to existing applicants. The 2014 PAF submission to the European Commission states: 'The schemes need to be monitored to ensure not just compliance but also the outcomes (deliverables) of the respective measures, to allow for adaptive management. The provision of improved local advisory services and supports is also necessary'<sup>23</sup>.

As the decision to re-allocate the greater portion of the RDP €528 million shows, there is flexibility in the RDP system: although only one official amendment per year is allowed by the European Commission, Governments appear to have room to manoeuvre, so it may be possible that similar funds could be available in the current round of RDP for SPA conservation. ANCs may be a suitable vehicle for the Hen Harrier SPA Scheme: this scheme already services 75% of land in Ireland and has a budget allocation in every RDP.

- **Locally-led Agri-Environment Schemes**

The Government's RDP submission for 2014-2020 includes a measure called 'Targeted Outputs' or 'LAES'. They are output-based projects initiated and advanced by local groups.

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<sup>20</sup> Prioritised Action Framework: Biodiversity Priorities for Ireland. DAHG

<sup>21</sup> European Commission: 'Financing Natura 2000 – EU Funding Opportunities 2014-2020' Directive, E. C., n.d. europa.eu. [Online]

Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:01992L0043-20070101&from=EN>

<sup>22</sup> Letter dated 23 June 2014 from DAFM to An Taisce under the European Communities (Access to Information on the Environment) Regulations 2007

<sup>23</sup> Prioritised Action Framework for Natura 2000: for the EU multiannual Financing Period 2014-2020, DAHG



The idea is to nurture and support local solutions for conservation. Farmers are paid for delivering specific results, other than GLAS commitments, that benefit the environment. An initial budget of €35 million was earmarked but this was later increased to €70 million. These schemes operate as pilot projects, to trial and test certain models. There is a competitive tender for the limited funds. The Burren LIFE and Arran LIFE are already established projects in this scheme. The Fresh Water Pearl Mussel and the Hen Harrier SPA network are also highlighted as priority projects for this scheme.

The details of the LAES have still to be established in an amendment, to the European Commission, at the end of this year.

## **5. The Birds Case: CJEU C418/04 – Commission v Ireland**

The Hen Harrier was a key issue in the judgment of the Court of Justice of the EU in 2007 against Ireland in the ‘Birds Case,’ for failure to provide adequate protection for wild birds. The Court judgment included the following: that Ireland had not designated SPAs in accordance with the required standards of protection; and that Ireland had not taken targeted action to prevent the deterioration of habitats and had not carried out appropriate assessment of activities that might impinge on such habitats.

This case remains open, pending the outcome of Ireland’s subsequent commitment to rectify the issues of contention. There is the continuing possibility of fines being imposed on Ireland if it is not seen to comply fully with the Birds and Habitats Directives, within a certain timeframe.

## **6. Hen Harrier Threat Response Plan: Ireland’s response to the Birds Case**

The Hen Harrier Threat Response Plan (Hen Harrier TRP) was initiated by an Inter-Departmental Steering Group, set up in 2012 to address the issues raised in the ‘Birds Case’. The objective is to improve the prospects for the Hen Harrier and to clarify issues of concern for farmers and other stakeholders. The Steering Group is to examine practices relating to forestry, agriculture, wind energy development and assess their impact on the Hen Harrier, with a view to determining the appropriate course of further action towards more effective management of the Hen Harrier SPAs.

The Steering Group comprises representatives from the DAFM and the Forestry Service, DAHG and NPWS, DCENR (energy and windfarm) and DECLG (planning).

The Hen Harrier TRP Consultative Committee was also established to ensure that the views of those affected by the Hen Harrier designation would be considered. The Consultative Committee is comprised of stakeholders including the Irish Farmers Association (IFA), Irish Creamery and Milk Suppliers Association (ICMSA), Irish Cattle and Sheep Association (ICSA), Coillte, Irish Timber Growers, Irish Forestry & Forest Product Association and environmental NGOs including Birdwatch Ireland and the Irish Raptor Study Group.

The Consultative Committee has commissioned three scientific Reports to gauge the effect of commercial forestry<sup>24</sup>, agriculture<sup>25</sup> and wind energy development<sup>26</sup> on the Hen Harrier and its habitat. It also initiated a new Hen Harrier Survey, being conducted this summer by the Irish Raptor Study Group. The findings will be published early next year. The last survey was in 2010.

## **7. Hen Harrier Conservation and the Forestry Sector in Ireland 2015 Report**

The DAHG commissioned ornithologists Ryan Wilson-Parr and David Tierney to produce a Report<sup>27</sup> on the interaction of forestry with the Hen Harrier.

The Report finds that forestry in Hen Harrier SPAs is a major contributor to the decline in Hen Harrier numbers in Hen Harrier SPA designated areas: it notes the 2010 survey finding of 18% decline across the Hen Harrier SPA network, as well as the 2012 Report on Hen Harrier conservation, linking a decline in Hen Harrier breeding success with second rotation forestry.

It also finds that forestry is only suitable in a Hen Harrier habitat up to a maximum of 40%, beyond which there is a decline in numbers. Approximately 52% of the total land area in the Hen Harrier SPAs is forestry, much of which is mature and therefore hostile to Hen Harriers in terms of breeding and foraging. The Report states that addressing these two issues is central to the successful implementation of the Hen Harrier TRP.

The Report notes that - although other potential factors may be involved - forestry is the dominant sectoral pressure in these areas.

A study referenced within the Report - *Changes in Forest Cover in Relation to Breeding Hen Harrier territories 2000-2010* - notes that the decline over a ten-year period of the Hen Harrier population in a selection of SPAs, ranging from 19% - 69% decline, coincided with forest maturation and the closing in of forest canopy.

The Report also notes that while much of the forestry in the SPAs at the time of designation was suitable pre-thicket growth, this will not recur in the SPA network until after 2035, given the growth cycle of commercial forestry.

## **8. IFDL: The Farmers' Representative Group**

In 2014, a national representative association of farmers was set up, from regions designated for the protection of the Hen Harrier known as the 'Irish Farmers with Designated Lands' (IFDL). Approximately 3800 farmers who own land in Hen Harrier SPAs are members. Membership also includes farmers with land located in adjoining areas. While the

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<sup>24</sup> *Hen Harrier Conservation and the Forestry Sector in Ireland 2015*

<sup>25</sup> The agriculture Report is not yet finalised

<sup>26</sup> The wind energy Report was completed by UCC on behalf of the IWEA and is under peer review

<sup>27</sup> See footnote 24 above

IFDL is supportive of the Birds Directive and the protection of the Hen Harrier, its main concern is that land designation restricts commercial farming practice which results in discriminatory financial losses for farmers with Hen Harrier SPAs.

The Committee met with representatives from the IFDL to identify what they felt would be important to take into consideration in drafting this report<sup>28</sup>.

### **8.1 - Aims of the IFDL**

- Ensure farmers can generate a fair income from designated lands, for the duration of the designation
- Restore an equivalent value on designated lands, to that of neighbouring non-designated lands of similar land type
- Secure a dedicated Hen Harrier SPA subsidy or compensation
- Be part of the consultative process (the IFDL are not included in the Hen Harrier TRP consultative committee although other farming groups are)

### **8.2 -The view of the IFDL on the effects of Hen Harrier SPA designation**

- The IFDL maintain that loss of income and lack of development potential are as a direct result of Hen Harrier SPA restrictions. This is because farmers must adhere to set farming practices which limit the economic potential of their land. These include stock and grazing restrictions, creation/maintenance of scrub, heath, rushes and grassland, and a ban on new forestry and wind energy development. As the majority of Hen Harrier SPA holdings are located on marginal, often boggy, uplands, forestry is - in most cases - an important source of income.
- Hen Harrier SPA designated land loses its value as a result of the restrictions on productivity. Ineligibility for forestry and wind energy development renders the land less commercially viable than similar undesignated land. Land suitable for forestry may sell for €4,000 per acre, whereas designated land may sell for €1,500 or may not sell at all. In addition, the land is often unacceptable as collateral against borrowing for development.
- While the IFDL does not necessarily support more afforestation this is a major source of income in marginal uplands and as such farmers should be compensated for losing the entitlements and options enjoyed by farmers of non-designated land.

### **8.3 - The IFDL requirements**

- The IFDL is seeking a separate dedicated Hen Harrier SPA Payment Scheme which will compensate farmers for loss of income arising from restrictions on land use.
- Such a scheme must be guaranteed to stay in place for the duration of the Hen Harrier SPA designation period.
- IFDL farmers believe that the existing subsidies do not differentiate between farmers on Hen Harrier SPA designated lands and those who are not subject to land use restrictions.

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<sup>28</sup> Meeting of the Joint Committee on Agriculture, Food and the Marine, 23 July 2015

- The IFDL further requests compensation for the blanket ban of forestry permissions and for the decrease in land value across the Hen Harrier SPA network.
- The IFDL must be part of the consultative process.

#### **8.4 - IFDL assessment of subsidies**

- The IFDL believes its members are unfairly penalised and subject to discrimination with regard to farm payments and subsidies under both CAP Pillars 1 and 2. As detailed earlier in this Report, IFDL farmers are subject to ineligibility issues under the Pillar 1 SFP.
- In addition, under REPS and AEOS, the Hen Harrier SPA farmers were put in a similar category as those who are not obliged to operate under the SPA restrictions.
- With regard to GLAS, the IFDL maintain that the extra 'top-up' subsidy of €2,000 for farmers with Hen Harrier SPA land is still inadequate to the estimated loss of income from restricted land use. To avail of the maximum payment of €7,000 for farmers with Hen Harrier SPA land, they must have a minimum of 19 hectares designated, three-quarters of whom do not. Furthermore, GLAS five-year term offers little security; an issue IFDL argue compromises their ability to draw down loans.
- The IFDL is seeking a guarantee of a continuous payment for the duration of the designation period.
- The IFDL does not accept that the LAES Scheme would be a suitable vehicle for Hen Harrier SPA subsidies.

#### **8.5 - IFDL Proposals**

- **Compensation**

The IFDL proposes a compensation scheme of €370 per hectare GLAS payment up to 19 hectares, €370 per hectare in excess of 19 hectares and a base additional payment of €150 per hectare up to 13.5 hectares. This is to ensure that farmers with less than 13.5 hectares will receive a payment in excess of the GLAS payment which is available to all qualifying applicants whether or not they are in designated areas.

- **Restore Land Value**

The IFDL believes its members should have the same basic rights as other farmers in terms of forestry and wind energy approvals, and if this is not possible they should be compensated in the following ways:

- I. Hen Harrier SPA farmers be 'loaned' equivalent parcels of land from clearfell State-owned Coillte land, for which they can secure planning permission for Forestry or Wind Turbine development;
- II. A carbon credit assigned to Hen Harrier SPA land, which can be traded with landowners who farm intensively.

- **Tax Credits**

The IFDL believes that there is scope to provide a solution to the Hen Harrier designation issue by providing tax credits in the following ways:

- I. A tax credit of approximately €620 / hectare / year on Hen Harrier SPA land, so that – the value of the land would be the same to that of neighbouring land of the same quality. This figure would apply where land has lost its total value due to the Forest Service not issuing any further afforestation licences within the six breeding Hen Harrier SPAs.
- II. The immediate introduction of a tax credit scheme to get the proper value back on land. This could be a temporary measure until such time as the forestry issue may be resolved following the deliberations of the threat response group. This is seen as a vital issue and one that should get immediate priority. There are many landowners with designated land for Hen Harrier (SPA) who now want to sell their land, but are struggling to do so as potential purchasers know they would not get an afforestation licence.
- III. If this tax credit system was put in place for Hen Harrier designated lands, it would put an immediate value back on land and also would crystallise a value for landowners who may want to borrow on the strength of land value.

## **9. Conclusions and Recommendations**

Having considered all of the different strands of the protection of the Hen Harrier, the Committee has agreed on the following conclusions and recommendations which it believes could positively contribute to addressing some of the problems involved in the designation and management of the six Hen Harrier SPAs.

The Committee emphasises that the principles outlined below for dealing with Hen Harrier designation should be applied equally where a similar designation affects farming and land value.

### **Subsidisation**

The Committee believes that Hen Harrier SPA farmers are providing a public good in preserving the Hen Harrier. Therefore, they should be able to avail of payment for work performed in pursuit of this objective. The Committee believes that the failure to compensate for loss of income or make payment for actions undertaken is discriminatory and unjust.

The Committee believes that the current Hen Harrier SPA subsidy under GLAS is not adequate. Furthermore it agrees that GLAS funds are not sufficient to meet the necessary level of Hen Harrier SPA subsidy.

The Committee notes that a subsidy or ‘payment for actions done’ was an agreed principle outlined in an NPWS FPS fact sheet<sup>29</sup>, stating: ‘the government is committed, as part of the

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<sup>29</sup> <http://www.npws.ie/farmers-and-landowners/schemes/other-forms-compensation>

social partnership process, to the payment of a fair and proper level of compensation to landowners and users who have lands designated as a SAC or SPA.' It goes on to state: 'landowners seeking compensation who do not join REPS will be required to manage their lands in accordance with a farm plan drawn up by the NPWS. Where the operation of such a plan gives rise to income loss or extra costs, these will be compensated for by NPWS.'

The Committee notes that compensation does not attach to a failure to secure planning permission due to Natura 2000 designations or to ineligibility for any reason for Forestry Grants or Premiums.

**Recommendation 1:** The Committee considers that the obligations imposed on the Hen Harrier SPA farmers effectively make them 'custodians of the environment', and therefore recommends that this principle be accepted so that the farmers are paid for carrying out this duty.

**Recommendation 2:** The Committee recommends that a separate, dedicated payment program be established for the purposes of financing a Hen Harrier SPA scheme. These payments should be framed as payments to farmers for work carried out on their land to protect the Hen Harrier, as well as compensatory payments for being debarred from conducting traditional agricultural activity. The work carried out by farmers to maintain the designated areas in favourable condition for the Hen Harrier is for the public good.

**Recommendation 3:** The Committee recommends that payments apply only to the curtailment of current or past activities and current or past income foregone. Payments should not apply to potential or future income.

**Recommendation 4:** The Committee does not recommend that payment be made for failure to secure planning permission or a grant for new development.

**Recommendation 5:** The Committee believes that the LAES is not the proper vehicle for the Hen Harrier SPA network, which needs one countrywide solution. Furthermore, the €70 million budget allocation for the LAES programme would not be sufficient, when shared with Burren and Fresh Water Pearl Mussels projects over the period of the current RDP round.

**Recommendation 6:** The compensation scheme proposed for farmers with Hen Harrier SPAs should be a long term scheme and not tied to the EU financing cycles, which normally last 7 years.

## **EU Dimensions**

The Committee believes that the restrictions imposed on farmers towards the creation of habitats suitable for the Hen Harrier have resulted in diminution in earnings and a loss of land value. This is at variance with the land designation principles enshrined in the EU legislation governing Natura 2000 sites.

In terms of budgeting, DAFM controls both CAP Pillar 1 subsidies and all co-financed initiatives in Pillar 2 under the RDP. The Committee believes that this shows that adequate supports are available under CAP Pillar 2 for Hen Harrier Schemes. However, in view of recommendation 6 the State will have to fund any shortfall in the funding over the period of the scheme.

The Committee notes that DAFM has stated that about €400 million of the €528 million allocated for Natura 2000 in RDP 2007-13, was re-allocated across the agri-environment and LFA Schemes in Axis 2.

The Committee recognises that the Hen Harrier SPA designations are creating actual areas of constraint and that 75% of land in Ireland is already subsidised by the ANC scheme.

**Recommendation 7:** The Committee recommends that the RDP Axis 2 scheme for ANC (formerly known as DAS and LFA) be examined as a potentially suitable vehicle for a Hen Harrier SPA Scheme subsidy. The rate of payment from the ANC Scheme should be relative to the constraint imposed and there should be no hectare limit to the eligibility of the designated land under the scheme.

**Recommendation 8:** The Committee notes that funds secured under the RDP 2007-2013 were re-allocated over time. The Committee therefore recommends that re-allocation of funds under the current RDP be examined to alleviate the Hen Harrier difficulties.

### **Farmer Involvement**

The Committee notes there was no consultation with farmers prior to the designations being made, although it acknowledges the designation criteria imposed by the European Commission. The Committee believes conservation measures will not be successful if farmers find the terms unworkable.

The Committee acknowledges the risk that the designation of Hen Harrier SPAs without adequate subsidy could lead to land abandonment and consequent land degradation and loss of habitat and further escalate rural depopulation.

The Committee is mindful of the protection of rural communities and notes that the demands of mainstream agriculture can marginalise conservation issues.

**Recommendation 9:** The Committee recommends that farmers and farming groups be more involved in the entire process of protecting the Hen Harrier.

### **Management and Administration**

In terms of management, administration and budgeting, a collaborative way forward must be found between government departments. The management of the Hen Harrier SPA network involves matters that span several Departments, including agriculture, forestry, planning, wildlife services and energy, so it may not be possible to give one body sole authority.

**Recommendation 10:** The NPWS under the DAHG should be the lead department for any

national Hen Harrier scheme and there should be constant co-operation between the different relevant departments. DAHG should be responsible for ensuring adequate pay out to farmers to ensure proper protection and maintenance of the habitat.

**Recommendation 11:** The Committee recommends implementing a consistent monitoring system to evaluate how the management of the Hen Harrier SPA network has been working thus far, and to ascertain whether the desired conservation outputs are being achieved.

**Recommendation 12:** The Committee recommends that the relevant bodies conduct Hen Harrier population surveys at regular intervals.

**Recommendation 13:** The Committee recommends that an optimum time scale must be estimated for re-instating the Hen Harrier population, in order to set the duration on a Hen Harrier SPA subsidy scheme.

**Recommendation 14:** The length of time of any scheme aiming to protect the Hen Harrier must be clear and definite and should be devised in consultation with ornithological experts to ensure that any such schemes will benefit the Hen Harrier.

## Forestry

The Committee notes the suggestion contained in the Hen Harrier TRP report entitled *Hen Harrier Conservation and the Forestry Sector in Ireland 2015* that management of existing SPA mature forestry is reviewed.

The findings of the 2010 Hen Harrier Survey - which recorded acute declines in several of the Hen Harrier SPAs (18%), are noteworthy. This decline is attributed mainly to afforestation.

Forestry now accounts for 52% of Hen Harrier SPAs and much of this forestry has matured, making the SPAs unsustainable as Hen Harrier habitats.

The Committee appreciates the difficulties associated with preventing further habitat loss due to the removal of scrub and heath by some farmers in order to qualify for the SFP or BPS.

While the Committee acknowledges the loss of potential earnings from forestry as a result of the blanket ban on new forestry permissions in Hen Harrier SPAs, it does not envisage the provision of compensation in these cases.

The Committee notes that forestry was not banned at the inception of the Hen Harrier SPA Scheme.

**Recommendation 15:** The Committee recommends that new methods of thinning, harvesting and rotation be adopted to reduce the extent of closed canopy areas.



## **Wind**

Wind energy projects are not given planning permission in Hen Harrier SPAs at present. Wind turbines are believed to have a negative impact on the Hen Harrier population but this impact is difficult to quantify. The Hen Harrier Threat Response Plan on the impact of the developing wind energy industry on the Hen Harrier is due to be published soon.

**Recommendation 16:** The Committee recommends that an impact assessment report be conducted in ascertaining the effect of the increasing rate of windfarm development in upland areas.

## **Tax Credits**

The IFDL suggested that some form of tax credit be granted to its members. This would be an innovative way to address some of the difficulties experienced by farmers with Hen Harrier designations. In particular, it would help restore land value for the purposes of capital acquisition. The Committee is aware of the high threshold of 80% of the land being transferred required to be agricultural in nature to qualify for relief. A reduction of this threshold in cases of designated land would provide some relief to farmers with designated lands.

**Recommendation 17:** The Committee recommends that the possibility of a tax credit scheme be explored in order to restore appropriate land value to designated land and therefore facilitate land mobility.

**Recommendation 18:** The Committee recommends that the effect of designation on eligibility for agricultural relief be examined and appropriate steps be taken to ensure that farmers are not disadvantaged by designation in qualifying for agricultural relief on land transfer. This would be of particular assistance in cases of inheritance.



## **Appendix 1 Membership of the Joint Committee**

**Deputies:**

- Tom Barry (FG)
- Pat Deering (FG) [Vice-Chairman]
- Andrew Doyle (FG) [Chairman]
- Martin Ferris (SF)
- Martin Heydon (FG)
- Willie Penrose (LAB)
- Éamon Ó Cuív (FF)
- Thomas Pringle (IND)
- Arthur Spring (LAB)

**Senators:**

- Michael Comiskey (FG)
- Denis Landy (LAB)
- Paschal Mooney (FF)
- Mary Ann O'Brien (IND)
- Brian Ó Domhnaill (FF)
- Pat O'Neill (FG)



## **Appendix 2 Terms of Reference**

### **a. Functions of the Committee – derived from Standing Orders [DSO 82A; SSO 70A]**

- (1) The Select Committee shall consider and report to the Dáil on—
  - (a) such aspects of the expenditure, administration and policy of the relevant Government Department or Departments and associated public bodies as the Committee may select, and
  - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee for the purposes of the functions set out below, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—
  - (a) Bills,
  - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 164,
  - (c) Estimates for Public Services, and
  - (d) other mattersas shall be referred to the Select Committee by the Dáil, and
  - (e) Annual Output Statements, and
  - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies, and report thereon to both Houses of the Oireachtas:
  - (a) matters of policy for which the Minister is officially responsible,
  - (b) public affairs administered by the Department,
  - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
  - (d) Government policy in respect of bodies under the aegis of the Department,
  - (e) policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
  - (f) the general scheme or draft heads of any Bill published by the Minister,

- (g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
  - (h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
  - (i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in paragraph (4)(d) and (e) and the overall operational results, statements of strategy and corporate plans of such bodies, and
  - (j) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
  - (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,
  - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
  - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
  - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees:
  - (a) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and
  - (b) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.
- (7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any sub-Committee or Committees standing established in respect of the Select Committee.
- (8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
  - (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,

- (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
- (c) at the invitation of the Committee, other Members of the European Parliament.

**b. Scope and Context of Activities of Committees (as derived from Standing Orders [DSO 82; SSO 70])**

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 26. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.
- (4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Dáil Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
  - (a) a member of the Government or a Minister of State, or
  - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.