

Review of Section 40 of the Wildlife Act - Burning/Cutting Controls

Public Consultation

1. Introduction & Background

The Minister for Arts, Heritage and the Gaeltacht has initiated a review of the legislative controls set out in Section 40 of the Wildlife Acts 1976 to 2012 governing the control of burning and hedge cutting.

As part of the review the Minister is seeking the views of the public and interested parties with a view to ensuring the on-going effectiveness of the controls. This consultation process provides an opportunity to input into the process of developing any potential changes. This document sets out the background to Section 40, examines the provisions contained within it and considers some issues for change. Discussion questions are also set out to help focus on the key issues.

2. Why is controlling hedge-cutting and burning important to biodiversity?

The main purposes of Section 40 are to protect bird life during the nesting season, to prevent forest fires, and to protect vegetation and wildlife habitats during the months of growth and reproduction. A closed period between 1 March and 31 August is set out in the legislation, during which a prohibition is in place on the destruction of any vegetation on “land not then cultivated” and of any vegetation growing in a ditch or hedge. There are limited exemptions to this, for example, for health and safety reasons, the destruction of noxious weeds, during works permitted under statute etc. The full provisions of the section are set out in the Appendix.

The current closed period is based on the generally recognised nesting and breeding period for wild birds. In the original Wildlife Act, 1976, the dates for the period were 15 April to 31 August but were extended by the Wildlife (Amendment) Act, 2000 to the current dates - primarily to afford further protection to wild birds. However, it is worth noting that the provisions are not about protecting just birds, but a range of biodiversity that contributes to food chains and wider ecosystems.

Ireland has obligations under the EU Birds Directive, and under the Wildlife Acts, to ensure that our birds and habitats are adequately protected. Recent reports indicate that 28% of Ireland's breeding bird species are currently in decline. The Article 17 Report under the Habitats Directive concludes that 31% of habitats are in decline.

Under EU law, there are important provisions that have direct relevance to the protection of hedgerows as wildlife habitats:

- Under the EU Birds Directive, Member States are required to preserve, maintain or re-establish a sufficient diversity and area of habitats for all bird species.
- Some upland habitats protected under the EU Habitats Directive can come under pressure from burning.
- Member States are also obliged to endeavour ...in their land-use planning and development policies.....to encourage the management of features of the landscape which are of major importance for wild fauna and flora". This is given recognition for example in the Planning and Development Acts.

In Ireland, where there is a low cover of native woodland, hedges are of exceptional importance in providing habitats and corridors for maintaining wildlife diversity, particularly for birds, but also for wild plants and other ecologically important organisms that provide food and shelter for birds. Wrens, dunnocks, robins, thrushes and willow warblers as well as rarer species depend greatly on hedgerow habitats.

In general, untrimmed, thorned hedgerows containing shrubs such as blackthorn, whitethorn, holly, briars and brambles are favoured by birds as they provide protection from predators. Many of Ireland's breeding birds are originally woodland birds and especially in areas of low woodland cover these birds are dependent on hedgerows.

3. Why Consider Amending the Closed Period?

While hedgerows and scrub, in upland areas and other areas, are important as wildlife habitats, it is also acknowledged that they need to be managed in the interests of both farming and biodiversity. The assistance of Landowners and managers is required in order for nature conservation goals to be achieved and it is therefore vital that all parties work together towards such aims. In this regard, it is acknowledged that landowners and their representatives have often stated that the closed period is too inflexible and have suggested that the closed period be amended in order to take account of land management issues which arise on a regular basis. This review aims to ensure that the most mutually-beneficial system is in place, while ensuring the protection of biodiversity.

It should also be noted that Ireland's National Biodiversity Plan 2011 - 2016 commits to review the controls on under grazing and over grazing (Action 5.5) and the management of hedge rows (Action 9.1). The controls in section 40 of the Wildlife Act are relevant to both these issues.

Hedge Cutting

Significant vegetation growth occurs during summer months and can impact on motorists/farmers views of traffic. The exemptions under section 40 (see Appendix) already allow for local authorities to carry out cutting of hedges and ditches on health and safety grounds and it should also be noted that the Roads Act, 1993¹ obliges landowners to take all reasonable steps to ensure that trees, shrubs etc. are not a hazard to road users.

It has been suggested that landowners should have clear power to cut roadside hedges from the end of July on the basis that birds will have generally left their nests by then.

¹ Section 70

Burning

Some farmers and land managers (particularly those with land on upland areas of the country) have sought controlled burning (a form of land management) to be allowed on their land later in the year than the end of February. The main argument here is that such land is often still too wet to burn prior to the closed date.

Setting the Closed Period through Regulation

With regard to the issue of flexibility, it has been suggested that the legislation be amended to allow the closed period be set through Ministerial Regulations rather than in the main Act.

4. Questions to consider

In order to fully consider the options available in possibly amending Section 40, respondents are asked to give their views on the following questions. Replies will be considered as part of this consultative process and will feed into any decisions made on the matter.

Hedge Cutting

Should the closed period for cutting hedges be changed? If so, to which dates?

Burning of Vegetation:

- a. Should the current dates be maintained - if so why?
- b. Should different closed periods be introduced for burning as opposed to hedgecutting?
- c. Should different rules apply in different areas eg between enclosed lands and unenclosed land - if so why?

- d. Should derogations or licencing for burning be introduced during the closed periods - if so why?
- e. Should flexibility be introduced to allow dates to be changed by statutory instrument, or by allowing a Ministerial order to extend the burning period in any particular year?

Protection of Biodiversity

While the review will consider all options set out above, and any other which may arise during the consultation period, it should be noted that any changes must be in line with Ireland's obligations to protect and enhance our habitats, birds and other species and not to increase the threat to them. This will be an overriding consideration in any proposals for change.

Submissions

Submissions on this matter should be forwarded to:

Review of Section 40
Department of Arts, Heritage & the Gaeltacht,
7 Ely Place,
Dublin 2

Or by email to nature.conservation@ahg.gov.ie

By Friday 9th January 2015

Appendix

Section 40 of the Wildlife Acts, 1976 to 2012 sets out the current legal position with regard to the destruction (cutting or burning etc.) of vegetation as follows:

The Closed Period

“40(1) (a) It shall be an offence for a person to cut, grub, burn or otherwise destroy during the period beginning on the 1st day of March and ending on the 31st day of August in any year, any vegetation growing on any land not then cultivated.

(b) It shall be an offence for a person to cut, grub, burn or otherwise destroy any vegetation growing in any hedge or ditch during the period mentioned in paragraph (a) of this subsection.”

Exemptions to the Closed Period

(2) Subsection (1) of this section shall not apply in relation to

“(a) the destroying, in the ordinary course of agriculture or forestry, of any vegetation growing on or in any hedge or ditch;”

“(b) the cutting or grubbing of isolated bushes or clumps of gorse, furze or whin or the mowing of isolated growths of fern in the ordinary course of agriculture; “

“(c) the cutting, grubbing or destroying of vegetation in the course of any works being duly carried out for reasons of public health or safety by a Minister of the Government or a body established or regulated by or under a statute;”

“(cc) the clearance of vegetation in the course of fisheries development works carried out by the Central Fisheries Board or a regional fisheries board in the exercise of its functions under the Fisheries Acts, 1959 to 1999;”

- “(d) *the destroying of any noxious weed to which the Noxious Weeds Act, 1936, applies; “*
- “(f) *the removal or destruction of vegetation required by a notice served by the Minister under section 62 (1) of the Act of 1946 to be removed or destroyed;”*
- “(e) *the clearance of vegetation in the course of road or other construction works or in the development or preparation of sites on which any building or other structure is intended to be provided; “*

No Exemptions for Burning

There is an important distinction to note with regard to exemptions – they do not apply to burning of vegetation.

“but this subsection shall not operate to exclude from subsection (1) of this section anything done by burning.”