

**Ref: 2015S40/0030**

**Review of Section 40 of the Wildlife Acts - Burning/Cutting Controls**

**Submission by** \_\_\_\_\_, *Co Kildare*

The restrictions on hedge cutting and destruction of vegetation on uncultivated lands has served the country well since the commencement of section 40 of the Wildlife Act, 1976. It brought about an awareness among land managers of the importance of hedges and uncultivated lands to wild birds, particularly during their period of breeding and rearing, and to the conservation of biodiversity in its many forms.

The wildlife (Amendment) Act 2000 amended section 40 to extend the restricted period, to provide clearer focus to the circumstances in which hedge-cutting and other destruction of vegetation may be carried out during the breeding season and to remove any doubt that the destruction of vegetation growing in hedges or ditches during the specified period is prohibited.

Since the commencement of section 40, most hedge-cutting activity and the destruction of vegetation on uncultivated lands is now routinely done in the months outside the restricted period.

It has been of little inconvenience to farmers, as section 40 does not apply to the destruction of any vegetation in the ordinary course of agriculture or forestry. Local Authorities and other government bodies are exempt from section 40 when they are cutting road hedges and destroying other vegetation for reasons of public health and safety. A Road Authority can serve a landowner with a notice requiring the removal/trimming of any vegetation in a road hedge where it is a potential hazard to road users.

Despite the above exemptions, calls continue to be made for further relaxation of section 40, particularly in relation to trimming of road hedges. Most of the arguments made for a relaxation of the restricted period do not stand up to scrutiny. Some are made by people who value neatness over nature and some of the loudest calls are from people who have a commercial interest in extending the hedge cutting period.

**Hedge Cutting**

The restricted period for hedge cutting should not be changed. Road hedges in particular are most productive in terms of biodiversity and in areas of

intensive agriculture are often the only refuge for many species of fauna and flora.

An argument can be made to put back the restricted period to mid March. Although some hedgerow birds may have started nesting by this time the survival rate of the resulting chicks is low due to the absence of foliage and growing vegetation for cover from predators at this time of year.

The restricted period should continue until the 31st of August. It is true that most hedgerow birds will have generally left their nests by the end of July, but there are exceptions; The woodpigeon will still be nesting during the month of August. The yellowhammer, a species of high conservation concern, will still be nesting in August. This species is generally confined to tillage areas and builds its nests in the vegetation near the bottom of the hedge. In tillage areas the composition of roadside hedges often provide the best nesting opportunities for yellowhammers.

Some consideration should be given to allow a person to trim hedges in the curtilage of his dwelling. Although no person has yet been prosecuted for trimming his garden hedge between March 1st and August 31st it is still an illegal act and perhaps an exemption should be made.

### Burning of Vegetation

(a) The current dates must be maintained.

It must be remembered that the primary reason for the closed period is to protect wild birds during their period of breeding and rearing. Many moorland birds will have commenced their breeding cycle in early March. Mallards will be incubating eggs. Red grouse will be aggressively defending their territories. Breeding curlew and hen harrier will also have returned to their nesting grounds. Large moorland fires in March would have a significant adverse impact on these and many other wild bird species.

The cutting or grubbing isolated clumps of gorse, furze or whin or the mowing of isolated growths of fern in the ordinary course of agriculture is not prohibited and can be done at all times of year. It is only the drastic action of burning that is prohibited between March 1st and August 31st..

Burning is not a desirable land management tool. Controlled burning in uplands is almost unknown in Ireland. They are usually started by individuals with no experience in managing safe, controlled burning operations and whose only intention is to maximise early grazing for sheep. Too often the burning of uplands and bogs leads to dangerous wildfire

incidents requiring the attention of the Fire Services and can cause long term soil damage and degradation of habitats.

Calls for exemptions for controlled burning for the propagation of red grouse are unjustified, as other alternatives such as mechanical swiping, mowing and flailing can be used.

(b) It would be best if the closed period for burning remained the same as the restricted period for hedge cutting for easiest implementation of Section 40.

If any argument could be made for delaying the restrictions on hedge cutting until the middle of March the same argument could not be made for burning during that period. However, it could be argued that by mid August all moorland birds have completed their breeding cycles and controlled burning or other vegetation destruction could commence.

(c) Different rules should not apply in different lands.

Whether it is enclosed lands or unenclosed lands bird nesting occurs at the same time of year and having different closed period for burning makes no sense.

(d) Derogations or licensing should not be introduced for burning during the closed period. Any such derogation or licence would be tantamount to a licence to destroy birds nests, eggs and young. There are no extenuating circumstances in farming which would warrant a licence to burn moorland or bog in the bird nesting period.

(e) There is no good reason to introduce legislation to allow dates to be changed by statutory instrument or Ministerial order to extend the burning period in any particular year.

The bird nesting seasons and the processes in the life of all forms of fauna and flora will remain the same from year to year.

Dates should be set under primary legislation with possible exemption for imperative reasons of public health and safety only.

If legislation was introduced to licence burning in the closed period it could only apply to people who are fully trained and certified in the act of burning. It would be almost impossible to penalise a person who lost control of a licensed burn.

The National Parks and Wildlife Service (NPWS) is the statutory body with primary responsibility for implementation of the Wildlife Acts 1976 to 2012.

An Garda Siochána also can enforce the provisions of the wildlife Acts but have seldom if ever took a section 40 case.

Some NPWS regions have an excellent record in the enforcement of section 40, which has resulted with better adherence to the section in the restricted period. However, NPWS should endeavour to implement section 40 uniformly across the country. It is disappointing that in some areas NPWS field staff fail to notice even the most flagrant breeches of section 40.

Local Authorities with responsibility for road safety are in an excellent position to show good example when trimming road hedges for public health and safety reasons. Some road engineers appear to only grudgingly comply with section 40 and at times appear to far exceed their public health and safety responsibilities. Farmers often ask why can the County Council do what it likes with road hedges and they get penalised. Council road engineers are not trained ecologists and can not be expected to fully appreciate the need to conserve biodiversity.

A training course should be offered to Council road staff where they could be instructed in the economical use of the hedge-cutting machine whilst fully maintaining their public health and safety responsibility and at the same maximising the hedges worth for the conservation of biodiversity.

*End of Submission*