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The National Trust for Ireland

**Review of Section 40 of
the Wildlife Act 1976
(as amended):**

**Burning and
Vegetation Cutting Controls**



**Submission to the
Department of Arts,
Heritage and the Gaeltacht
9 January 2015**

1. Introduction

An Taisce welcomes the opportunity to contribute to this public consultation on section 40 of the Wildlife Acts 1976 to 2012 governing the control of burning and vegetation cutting.

The primary objective of Section 40, as it stands, is to:

- Protect wildlife during the breeding and nesting season,
- Prevent the spread of fires (including forest fires), and to
- Protect vegetation and wildlife habitats during months of growth and reproduction.

In order for this to be achieved, section 40 outlines a specific period during which the cutting or burning of vegetation is prohibited (subject to exemptions). Section 40 (1)(a) thus states that ‘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’ (Wildlife Act, 1976 (as amended)). Section 40(1)(b) states that ‘It shall be an offence for a person to cut, grub, burn or otherwise destroy vegetation growing in any hedge or ditch during the period mentioned in paragraph (a) of this subsection.’ Section 40 allows for a wide range of exemptions to the above 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;

(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;

(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;

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

The closed dates for burning and cutting are based (in a generic way) on what the Department calls the generally recognised nesting and breeding period for wild birds. Any shortening of the closed period under section 40 of the Wildlife Acts would evidently have serious adverse consequences for Ireland’s already threatened and declining biodiversity, and this should not be countenanced by government, notwithstanding pressure from industry lobby groups.

Indeed, there is a strong case based on the precautionary principle for an extension in the closed period to protect early nesting/breeding species and the nest building period, not least against the backdrop of climate change and phenological changes. At the other end of the closed period it is clear that many farmland bird species in Ireland nest well into August and certain (namely the Yellowhammer) into September. Likewise in the case of burning controls in respect of ground-nesting

birds, the hen harrier nests well into September. In the absence of detailed phenological data for Ireland, An Taisce would support applying the precautionary principle (one of the core principles of EU environmental law, enshrined in the Treaty) such that the closed period is extended at both ends of the current closed period, to cover the period February through September inclusive. In addition to protecting birds and other wildlife during the breeding season, this would have the beneficial effect of protecting valuable food resources for wildlife, since vegetation can be laden with berries and other food well into September.

In addition, An Taisce would support a review of the manifold exemptions which apply in respect of the closed period under the Wildlife Acts, as well as the manner in which these are applied. The exemptions are framed so broadly (e.g. ‘public health or safety’), and appear to be regulated so poorly, that they arguably provide almost a *carte blanche* for cutting during the closed period. Moreover, the exemptions are weighted so heavily in favour of human ‘development’ as to appear inappropriate in a modern piece of conservation legislation.

2. Hedgerows and cutting

2.1 Importance of hedgerows

Hedgerows are significant to the Irish landscape as they hold value for wildlife, farming, culture and archaeology (Stanley et.al, 2011)

In ‘A Guide to Habitats in Ireland’ it is stated that hedgerows support a wide variety of shrubs and trees including:

- Hawthorn
- Blackthorn
- Gorse
- Holly
- Fog-rose
- Bramble
- Ash
- Hazel
- Beech
- Elder
- Elms
- Willows

Research has indicated that bird species richness and overall abundance correlates strongly with increasing hedge size (Hinsely & Bellamy, 2000). A study carried out in the UK indicated that the frequent cutting of hedges had a significant impact on biomass production with fewer flowers (-75%) and berries (-83%) in all years than the monitored uncut hedges (Stanley et.al 2011).

As well as being iconic symbols of the Irish rural landscape, hedgerows are extremely important habitats for biodiversity, including many farmland bird species. Hedgerows provide food, shelter and safety for farmland bird species as well as other biodiversity. The linear form of hedgerows provides cover for both local and larger scale movements (Hinsely & Bellamy, 2000) - including, for example, for bats - produces food resources and provides a space for nesting and breeding. Hedgerows are also very important for farmers in wildlife terms, acting as habitats for pollinators and for predators of species regarded as pests. Hedgerows also provide other valuable ecosystem services, such as sequestering carbon and helping to prevent soil erosion. In the uplands, so-called 'scrub' habitats are equally important.

2.2 Objection to any shortening of closed period for cutting; and call for an extension in the closed period

If the closed dates for vegetation cutting were to be shortened, this would in turn have an impact on Ireland's biodiversity which is reliant on such vegetation. In order to conserve biodiversity in accordance with Ireland's international obligations (including under the EU's Birds and Habitats Directives), it is important that a date no later than the 1st of March be applied (and enforced) in respect of the closed period for cutting vegetation. If the closed period were to be reduced in length, this would inevitably cause disturbances to some birds during the nesting season, as well as the destruction of nests and eggs (in breach of the Birds Directive); it would also result in the disturbance of other groups of animals during the breeding season, and the destruction of breeding sites and resting places. There would also be an adverse impact on the availability of food resources.

Thus, it is An Taisce's strong view that cutting should not be permitted after 1st March, and the closed period should not be shortened. The suggestion cited in the consultation paper to the effect 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” is unsupported by scientific evidence, and should not be given serious consideration. The closed period has been set as the end of August since 1976. There is no possible justification – and none has been given (other than anecdote) – for moving this back to the end of July. Any such move would be in clear breach of the EU Birds Directive, with attendant legal implications for the State.

Indeed, as argued above, An Taisce would support applying the precautionary principle such that the closed period is extended to cover the months from February through September inclusive. This would build future resilience into the system in terms of climate change and phenological changes, would protect valuable food resources, and would protect nest preparation periods and early nesting species, as well as late nesting species such as the Yellowhammer.

As a final point, An Taisce is of the strong view that the threshold set for screening for EIA in the case of hedgerow removal (the removal of 500 metres or more of field boundary triggers a need for screening) remains much too high, even post an adverse judgment from the Court of Justice of the European Union (C-66/06).¹

3. Burning and ‘scrub’ habitats

3.1 Burning

Burning as a form of land maintenance is a traditional management tool used to clear land. However, it is recognized that such practices can have serious adverse effects on the environment. For example, fire is said to have destroyed an estimated 16,000 hectares of land in Ireland in 2011 (O’Riordan, 2012).

The current legislation states that it is an offence to burn vegetation growing on any land from the 1st of March to the 31st of August (Section 40 (1)(a)). This restriction is

¹ See <http://www.agriculture.gov.ie/media/migration/ruralenvironment/environment/environmentalimpactassessment/EIAGuideforFarmers200212.pdf>.

in place in order to protect nesting birds and other wildlife during nesting and breeding seasons (Worrall et.al, 2010).

Appropriate protection for ‘scrub’ habitats is vitally important – research in the UK has indicated the importance of such habitats to threatened bird species that are also present in Ireland which include the Merlin, Whinchat, Grasshopper, Warbler, Linnet and Yellowhammer (BirdWatch Ireland, 2014). It is important to note that out of these species the Whinchat and the Merlin have been placed on the red and amber list respectively as *birds of conservation concern*.

3.2 Impacts of Burning

Burning during the spring season spells disaster for vulnerable nesting birds and wildlife (Hickly, 2011). The burning of vegetation during spring not only presents a danger to breeding and nesting birds but it also (due to weather and ground conditions) poses a threat to the general safety of the surrounding area. Despite being illegal, Coillte reported that in the space of one week in April in 2010, approximately 1,500 acres of forest had been burned, putting properties, wildlife and habitats at risk. Coillte also stated that the burning of vegetation in a careless and dangerous way, in close proximity to forests, was a major reason for the occurrence of these fires (Coillte, 2010).

The burning of scrub habitats has had an impact on birds such as stonechats, wrens and song thrushes as well as impacting migrants such as the whitethroats (Irish Examiner, 2010). Scrub fires have a severe impact on the breeding population of birds as they not only cause fatalities and injuries but also cut off important food resources.

The practice of illegal burning is also having detrimental impacts on Irish peatlands, including blanket bogs and raised bogs. Raised bogs and blanket bogs, wet heath and dry heath, protected under the EU Habitats Directive, are home to rare and sensitive plants and animals, which cannot survive practices such as burning (IPCC). Over the years, the practice of burning vegetation on these habitats is mainly carried out in order to accommodate peat extraction. Not only does the burning affect the wildlife present in these habitats, the burning of scrub vegetation in peatlands also decreases

the cover of sphagnum mosses. The decrease of sphagnum in turn depletes the generation of new peat. The frequent burning of peatlands in Ireland causes the release of large quantities of greenhouse gases. Therefore the practice of burning not only impacts wildlife and biodiversity but is also causing broader detrimental impacts for the environment via climate change, as well as endangering human health directly through fire.

The practice of burning on peatlands is an ongoing issue, affecting undesignated and designated bogs, including priority habitat active raised bog SACs. Research carried out on 100 peatland sites in Ireland indicated that burning was evident in 19% of the sites surveyed with severe damage evident in 8% of the sites (Cummins et.al, 2010). According to the IPCC (Irish Peatland Conservation Council), there are 199 peatlands of conservation value in the Republic of Ireland that are under threat from the practice of burning (IPCC). Figure 1 below indicates the number of sites that were surveyed that indicated damage from burning, and their habitat status.

Peatland Habitat Status	Number of sites
SAC	78
NHA	104
Undesignated local biodiversity areas	17
Total number of sites damaged by burning	199

Figure 1 Irish Peatland Conservation Council (IPCC). ‘Habitat loss of peatland’. Available at: <http://www.ipcc.ie/a-to-z-peatlands/peatland-action-plan/habitat-loss-of-peatlands/>

The practice of controlled burning is said to be utilized in order to promote and encourage new healthier vegetative growth. Thus, controlled burning on blanket bogs is practiced for sheep grazing and for Red Grouse production (Worrall et al. 2010). However, in Ireland, there has been a decrease in the population of Red Grouse by 70% in the last 40 years, which has resulted in the Red Grouse being added to the Red List of *birds of conservation concern* (Cummins et.al, 2010). The practice of ‘blanket

burning' is one of the factors cited by BirdWatch Ireland in explaining the loss of habitat that Red Grouse have experienced in Ireland.²

3.3 Objection to any shortening of closed period for burning; objection to derogations or licensing during the closed period; call for an extension in the closed period

It is evident that even with the current closed period under section 40 of the Wildlife Acts, severe damage is being done to Irish biodiversity as a result of non-compliance, poor enforcement, and poor fire management. To allow a lengthened amount of time during which burning is permitted, or to provide for derogations or the issuing of licenses for burning during closed periods would be contrary to the objectives of the Birds and Habitats Directives, as well as national biodiversity policy, and would have detrimental impacts on Irish biodiversity.

As argued in respect of hedge cutting, An Taisce would advocate the application of the precautionary principle in respect of the closed period for burning, such that the closed period would be extended at both ends. This would build resilience into the system given climate change and phenological changes, and would help to protect early nesting species and the nest building period, as well as late nesting species such as the hen harrier. The closed period should continue until at least 1st September (ideally later), with the exception of hen harrier areas where certainly no burning should be permitted before 1st October. Ideally the closed period should cover the months February through September inclusive. Any burning should be strictly licensed, and should adhere to a code of best practice, which should be rigorously enforced. In the absence of effective regulation, including compliance and enforcement, measures such as outright bans on burning in certain areas should be introduced.

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² See <http://www.birdwatchireland.ie/Default.aspx?tabid=136>

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