

CONSULTATION

Response Document



43 Southgate Street, Winchester, Hampshire, SO23 9EH, UK
Tel: +44 (0)1962 868 626 | enquiries@cieem.net | www.cieem.net

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

Department of Arts, Heritage and the Gaeltacht

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Introduction to CIEEM

The Chartered Institute of Ecology and Environmental Management (CIEEM), being the leading membership organisation supporting professional ecologists and environmental managers in Ireland and the United Kingdom, welcomes the opportunity to participate in this consultation process.

CIEEM was established in 1991 and has 5,000 members drawn from local authorities, government agencies, industry, environmental consultancy, teaching/research, and voluntary environmental organisations. The Chartered Institute has led the way in defining and raising the standards of ecological and environmental management practice with regard to biodiversity protection and enhancement. It promotes knowledge sharing through events and publications, skills development through its comprehensive training and development programme and best practice through the dissemination of technical guidance for the profession and related disciplines.

CIEEM is a member of:

- The Environmental Science Association of Ireland
- Europarc Federation
- European Network of Environmental Professionals
- IUCN – The World Conservation Union
- Professional Associations Research Network
- Society for the Environment
- United Nations Decade on Biodiversity 2011-2020 Network
- The UK All Party Parliamentary Group on Biodiversity
- The UK Environmental Policy Forum

Comments from CIEEM

CIEEM welcomes the opportunity to participate in the 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.

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CIEEM considers that any review such as this should be informed by literature review of the state of knowledge on bird nesting times, habitat and climate preferences and changes, and how these are similar or different among species groups. The review should rely on peer-reviewed published research as opposed to opinion from sectoral interests. In considering its submission to the Department, the following responses and comments to specific questions rely on best scientific knowledge and experience.

CIEEM is conscious that issues such as this can be divisive and polarize landowners, ecologists and conservation groups. It is considered therefore that research carried out by ecologists and land management specialists is required. It is further considered that an appropriate research programme should be included as part of the review.

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RESPONSE TO SPECIFIC QUESTIONS SET OUT IN THE PUBLIC CONSULTATION DOCUMENT

HEDGE CUTTING:

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

- The general consensus is that the dates should not be changed because the current dates afford protection to nesting birds and some protection to hedgerow flora and non-avian fauna. Changing the dates of the closed period could affect flowering and seed production with consequent impacts on invertebrate species - especially pollinators.
- The current closed period should suffice for most hedge nesting species, including multi-brooders, as nesting attempts are generally concluded within that period. Also the nature of a hedge cutting is such that a relatively significant proportion of hedge vegetation remains (not all of it is removed), so that birds can continue using a trimmed hedge relatively quickly if not straightaway - for example, for feeding and green corridor usage.
- Climate change: Data from the Nest Record Scheme run by the British Trust for Ornithology (BTO) provide strong evidence of shifts towards earlier laying in a range of species, linked to climatic change. Although based on UK data, similar trends may be expected in Ireland. (<http://www.bto.org/about-birds/birdtrends/2014/key-findings/early-breeding>). In light of evidence that milder temperatures associated with climate change are causing birds to breed earlier and to have more broods per year, the current closed period may need to be reviewed again with a view to extension at later stage. But that is not considered necessary at present. In the interim, in the case of an exceptionally warm early spring, together with evidence of early nesting and clearly available food for fledglings, the option of a Ministerial order might be prudent.
- Whilst it is generally considered that there is little justification for amendment to the blanket control on hedge cutting in terms of timing, there is a need to link to the protection of birds'

nests and their eggs at any time of year. A more appropriate approach might be to introduce an 'or recklessly' clause in section 22(4) (e) of the Wildlife Act , as in Northern Ireland.

Comment on exemptions and exclusions

- The health and safety requirements associated with roadsides and clear lines of sight etc. are understandable, but it is considered that local authorities should be required to take timing of hedge cutting into consideration when planning road maintenance (ie. apart from emergencies). Frequently hedges are cut prior to resurfacing or patching of roads, and good maintenance planning could reduce this.
- Similarly, land managers (eg. farming and forestry sectors - under which the majority of hedgerows are managed) should be required to plan their maintenance activities so that the closed period can be avoided, in which case the clause "*the destroying, in the ordinary course of agriculture or forestry, of any vegetation growing on or in any hedge or ditch*"; could be removed.
- It is relatively straightforward to avoid impacts on birds (and other protected species) using standard mitigation measures, such as clearing vegetation outside the closed period, surveying for nesting birds or other protected species (if none are present, no offence would occur) or to apply for a derogation licence to permit the clearance of trees and other vegetation during the closed period. Local authorities should be encouraged to include this as a planning condition. If such measures were enshrined in the legislation, the existing exemption to the closed period for construction works could be removed. The Department may choose to grant a derogation licence for the destruction of nests of some species (e.g. common species of pigeon and corvids) if satisfied that it would not affect the conservation status of the species involved, but a derogation system (as discussed below) would at least allow impacts to be assessed and monitored.
- It is considered that there is no apparent need to include Noxious Weeds in an exception clause. This relates to 1936 legislation. Some 'Noxious Weeds' such as Ragwort are of high benefit to invertebrates and are apparently not of particular concern to the agricultural community where they occur outside cultivated or actively farmed land – as evidenced by their abundance throughout (largely) marginal agricultural lands.

BURNING OF VEGETATION:

a. Should the current dates be maintained - if so why?

- It is considered that it is appropriate to implement a closed season in order to minimise impacts on biodiversity but while it is acknowledged that difficulties with land management currently arise due to weather conditions, any change in dates should be preceded by thorough research to establish that a change in dates would not negatively impact on semi-natural habitats, relevant breeding bird species and biodiversity in general. Also, although fire may be an efficient method to clear land in some situations it is important to note that vegetation can also be cleared using more easily controlled mechanical means (e.g. tractors, chainsaws), which may have a lower impact on biodiversity.
- Uncontrolled burning is a major hazard for biodiversity and it is considered that there should be strict controls in relation to burning, with agreed targets for frequency and areas to be burned and constraint in relation to weather conditions. (See comment on burn management plan in (b) below). In certain circumstances, correctly managed and controlled burning can be a useful biodiversity management tool.

- In respect of birds & habitats traditionally maintained through burning in Ireland (e.g. upland heath and bog habitats), the bird species in question tend to be ground nesters, an already relatively vulnerable group. The nature of a burning event (unless very tightly controlled) is such that a relatively significant proportion of vegetation is adversely impacted - often because the fire is too hot - which can effectively result in a relatively large-scale habitat loss for the relevant ground nesting bird species for that nesting season, as the vegetation may not recover sufficiently in time for the ground nesters to make another nesting attempt. This could also impact on the normal avian predator/prey relationships that normally occur in such ecosystems thus affecting the availability of prey for avian predators at a time when food resources are critical for successful nesting attempts. While an avian prey species might recover during the following nesting season, there is potential for a longer-term population impact on such species if burning is allowed to continue during the nesting season in successive years. Also, upland areas that are subject to burning may have a later nesting period owing to their topography and resulting lower temperatures which delay the onset of spring. Taking the above into account, the current closed period of the 1st March to 31st August inclusive seems reasonable.

b. Should different closed periods be introduced for burning as opposed to hedge cutting?

- Subject to prior research to inform on impact and best practice, different closed periods should be considered for burning and hedge cutting. However in some circumstances closed seasons could possibly apply to both enclosed land and hedgerows where the vegetation being burnt is similar.
- Land / habitat management practices should be specific to the habitats and species concerned rather than having a blanket use of open/closed seasons. Thus the dates for burning should be decided with reference to the habitat type, birds and other protected species that may be present in the vegetation, and should be based on the best available scientific information. In some habitats (e.g. bogs and heaths) the closed season may be timed to coincide with the peak breeding season of waders, grouse and raptors rather than passerines (which would be more common in hedgerows).
- A site-specific burn-management plan that sets out appropriate controlled burning methods, is informed by suitably qualified/experienced ecologists and agreed with NPWS would be more appropriate in terms of biodiversity protection than a blanket closed/open season. For example, this would be applicable to bird species associated with such habitats, where - for example, heather management can be key in continuing/successful Red Grouse *Lagopus lagopus* conservation. Clearly such an approach would be more applicable to habitats of ecological concern (e.g. bog, heath) than to those of low ecological value - for example, improved grassland) - although the former is traditionally managed through burning in Ireland while the latter is not.
- Burning in unenclosed land is a weather dependent activity. Therefore its management in fixed periods is not practicable / operable. Any necessary amendments to dates informed by good practice should be easily implemented.

c. Should different rules apply in different areas eg between enclosed lands and unenclosed land - if so why?

- As stated above, land / habitat management practices should be specific to the habitats and species concerned rather than having a blanket use of open/closed seasons which may not be appropriate across in all circumstances. It is considered probable that different rules will

need to apply to enclosed and unenclosed lands as well as for different habitat types and the species they support.

- Legislation must to be informed by research, desktop research review and reference to best practice land management, for example, Birdwatch Ireland's Action Plans for different habitat types.
- As above at (b), a site/ specific burn-management plan that sets out appropriate controlled burning methods, is informed by suitably qualified/experienced ecologists and agreed with NPWS would be more appropriate in terms of biodiversity protection than a blanket closed/open season.

d. Should derogations or licensing for burning be introduced during the closed periods - if so why?

- It is considered that it would be appropriate to allow derogation licences for certain activities, for example, to facilitate effective land management during exceptionally wet weather and to allow for regional differences in weather patterns. It is suggested that the applicant would be required to show that vegetation could not be cleared by alternative means (mechanical - tractors, strimmers, chainsaws etc), and to show that impacts on protected species have been considered.
- Derogation licenses should only be issued where it is evident that there will not be a negative impact on either the habitat or bird species as a result of burning. This would require ecological impact assessment to assess the risk of disturbance to protected species and / or damage to semi-natural habitats prior to the issuing of any licence for burning during the closed period.
- Such a derogation system could also be used by the Department to monitor the use of fire for land management / vegetation clearance.
- A burn-management plan, as referred to in comments above, could also fulfil derogation licence requirements.

CIEEM is very aware that the introduction of derogations and licensing increases the administrative burden on the licensing authority. If licensing or derogation were to be introduced then it would need to be accompanied by the provision of adequate resources to enable strict enforcement of the legislation.

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?

- Whether the extension of the burning season by Ministerial order would be appropriate is questionable, for example because of regional and local variation in weather patterns /intensity. Burning for land management should only be carried out when there is no risk of impact to flora, nesting birds and other fauna.
- It is considered that, in general, any requirement for a deviation from the period set out in legislation should be examined on a case by case basis and dealt with under a system of derogation as discussed above.

GENERAL COMMENTS:

CIEEM would like to make a number of general comments in relation to Section 40, as follows:

- The existing legislation relating to hedge-cutting appears not to be adequately implemented, and prosecutions are very rare. It is recommended that the procedures for reporting and prosecution should be updated to provide a more efficient process and with more rational penalties.
- The public consultation document states “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.” The justification for the emphasis on hedgerows in the consultation is not clear when Section 40 relates to all vegetation on uncultivated[†] land.
- [†]Cultivated: In the Wildlife Act 'cultivated' is not defined and perhaps this review is an opportunity for this to be defined / clarified as it is currently open to interpretation.
- It is noted that the closed season does not only apply to birds, but may include a broad range of biodiversity. In this regard, it is important to note that trees, hedgerows and other vegetation may support a range of rare and protected flora and fauna, and that if the closed season on vegetation cutting / burning is removed, it will be necessary to provide alternative measures to ensure that these species are protected. For example, such habitats may support European protected species such as bats and otters (which are strictly protected under the European Communities (Birds and Natural Habitats) Regulations 2011, as amended), and nationally protected species including common lizard, smooth newt, common frog, hedgehog, Irish hare, badger, stoat, pine marten, red squirrel, marsh fritillary and Vertigo snails (Wildlife Act 1976, as amended). Threats to all of these protected species should be considered when re-assessing the closed period for hedge-cutting and burning.
- In consideration of Ireland's obligations under European and National law, it is considered that vegetation clearance (hedge-cutting, burning or any other clearance) at any time of the year adjacent to designated conservation sites (European Natura 2000 sites, Natural Heritage Areas and private Nature Reserves) should be strictly regulated under a revised Section 40.
- It is noted that in *Actions for Biodiversity 2011-2016 Ireland's National Biodiversity Plan*, **Target 9** is “Effective Hedgerow and Scrub Management by 2016” and states (Under Actions for Biodiversity) that there will be a review of both hedgerow and scrub regulation with appropriate guidelines produced which should encourage best practice for hedgerow/scrub management for wildlife throughout the country and ensure that appropriate sanctions for unauthorised removal of hedgerows/scrub are applied.
- It is considered that a clause to allow the control of alien invasive species during the growing season should be included because this is when most feasible control methods are effective. This is also needed in order to comply with the upcoming EU IAS Directive. Such an approach can still take account of the need to protect birds and their nests and eggs and place an onus of due diligence to ensure pre-control surveys.
- In the context of invasive plant species such as Japanese Knotweed and Himalayan Balsam, perhaps this is an opportunity in the overall interests of biodiversity to draw attention the fact that they should not be inadvertently trimmed by hedge-cutting.
- Specific activities eg. cutting of vegetation for sustainable use (crafts, thatching etc):
It is considered that it would be useful to have a mechanism, such as a Ministerial Order or derogation, to permit a specific activity – assuming of course that it can be demonstrated

that there was no ecological impact resulting from same. For example, the cutting of rushes and reed species for craft uses, which - under the current Section 40 - cannot be harvested until September by which time the plant material would have started to degrade to a point where it becomes unsuitable for the required purpose.

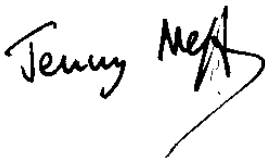
It is understood that the harvesting of rushes is permitted in UK during the months of June, July and August <http://www.rushmatters.co.uk/rush/harvesting/1/>.

As stated above, CIEEM is very aware that the introduction of a derogation system and licensing increases the administrative burden on the licensing authority. If licensing or derogation were to be introduced then it would need to be accompanied by the provision of adequate resources to enable strict enforcement of the legislation, including the investigation and prosecution of offences.

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CIEEM members are knowledgeable about the natural heritage of Ireland and, as a professional body representing practicing ecologists, CIEEM is well placed to advise on specific areas of wildlife legislation such as Section 40 – and others - of the Wildlife Act now and in the future.

CIEEM would welcome any opportunity to discuss proposed changes in legislation and is willing to assist as appropriate – at any stage, including reviewing/commenting on proposed amendments to Section 40 as they become available.



Jenny Neff BSc(Hons). MSc(Ecol). CEcol CEnv FCIEEM

Vice-President (Ireland) of the Chartered Institute of Ecology and Environmental Management (CIEEM)