



Mr Mark Bohan,
Department of Arts, Heritage and the Gaeltacht,
National Parks & Wildlife Service,
7 Ely Place,
Dublin 2.

13th January 2014.

Re: Proposed Amendment to Section 40 of the Wildlife (and Amendments) Act (1976-2012)

Dear Mr Bohan,

I refer to your letter of 1 December 2014 concerning a review initiated by the Minister for Arts, Heritage and the Gaeltacht of Section 40 of the Wildlife (and Amendments) Act (1976-2012).

Dublin City Council welcomes the opportunity to comment on the consultation document under the headings set out below.

Proposal to shorten the closed period for hedgerow cutting

Dublin City Council does not consider that the closed period be amended from end of August to end of July for a number of reasons:

Incompatibility with breeding cycle of protected fauna

The closed period, which starts in March, is already after the nesting season has commenced in February. DCC Parks Services aim to manage operations to avoid works in February for this reason. Several bird species fledge a second clutch of eggs, and require protection from disturbance. Bat species are actively feeding their young in July and the summer maternity colonies do not disperse until during August.

Non – alignment with legislation of adjoining jurisdictions and their habitats

It is noted that, in England and Wales, the closed season is 1 February-31 August, to take into account the nesting cycle. In Northern Ireland, the closed season is the same as our existing legislation, 1 March-31 August. As the growth season and corresponding habitat changes and wildlife breeding patterns are the same as the UK, it is considered that a more consistent approach between the jurisdictions be sought, based on research.

Incompatibility with climate change strategy and adaptation at European level

Recent data on birds and butterflies published by Birdwatch Ireland, the Royal Society for the Protection of Birds, and the European Union suggests that there is a northwest shift of European populations of these taxonomic groups due to climate change. This pattern is evident for many species in the recently published Bird Atlas of Ireland. Therefore, the importance of Ireland's habitats, including hedgerows, for sustaining breeding populations in Europe an important part of climate change adaptation.

Exemption for control of invasive alien species designated in the Birds and Habitats Regulations

Dublin City Council proposes that vegetation removal as a specific method of management of a designated habitat in a Special Area of Conservation should be permitted by way of procedure of consent from National Parks and Wildlife Service (NPWS), where it is in accordance with objectives of an approved Conservation Management Plan for the site. A specific example of this which is encountered by City Council is the need to remove a planted hedge of legally designated invasive alien species (*Hippophae rhamnoides*) which is altering the condition of three designated habitats within an SAC and is contrary to the site's Conservation Management Objectives. The current legislation does not offer a facility for the NPWS to consent to its removal by Dublin City Council. This increases the risk of dispersal of the plant and reduces the available timeframe to control and eradicate the plant. Thus, compliance with the Wildlife (and Amendment) Acts (1976-2012) requires practices contrary to the EU Habitats Directive and also the Birds and Habitats Regulations of 2011. This incompatibility of legislation should be addressed on an urgent basis, as the cost of delayed response to invasive species is increased to public bodies and landowners and the cost to the State of failure to protect the SAC could be higher again.

Proposal to shorten the closed season for burning of vegetation

Dublin City Council is of the view that consideration of controlled burning as a specific method of management of a habitat in a Special Area of Conservation could be permitted by way of consent from National Parks and Wildlife Service, where it is in accordance with objectives of the Conservation Management Plan for the site. With regard to enclosed or unenclosed lands, land management practices which involve burning will release carbon into the atmosphere and such practices should be assessed cumulatively to determine the overall impacts to habitat change, carbon emissions and landscape management. As Dublin City Council is mainly an urbanised area, burning is not a usual land management practice, due to property risk and human safety issues.

Further issues arising:

Internal consultation within Dublin City Council has raised other issues which should be considered in the review, as follows:

1. Any proposed amendments to the legislation should be specific to hedgerow/ hedges as some interpretation could be made that it extends to a broader range of vegetation.
2. It is suggested that, if it is decided to shorten the closed season for hedge cutting there should be provision that a recorded inspection should be taken prior to hedge cutting operation to determine the presence of nesting birds, perhaps from mid-July? This would ensure accountability of any decision taken and that it is in accordance with EU Directives.

3. A long-standing question has been whether a legal definition of 'cultivated' land under S. 40 (1) can be provided. Dublin City Council would be grateful for clarification on whether or not a public park or open space can be defined as 'cultivated' land under this section. The City Council applies the precautionary principle in terms of its maintenance regimes, and does not carry out the works in parks during the closed season. However, Dublin City Council has on occasion had to apply S. 46 (b) of the Wildlife Act 2000 with regard to public health and safety.

4. The value of hedgerows to insects, including butterflies, as a food source during the summer months and prior to breeding is well-known. The NPWS has stated that 18% of our native Irish butterfly fauna is under threat of extinction and 15% is Near Threatened (Red List of Irish Butterflies 2010, NPWS). The cause of these declines is poor land management practices leading to change in habitat quality, as stated by the report. The report also states that: 'no butterfly species is legally protected in the Republic of Ireland under the Wildlife Act, 1976 or the Wildlife (Amendment) Act, 2000.' It is considered that the review should take opportunity to give legal protection to the species under threat as the case in Northern Ireland (as per the NPWS Red List of Irish Butterflies 2010)

Several of these species are found in Dublin City Council Parks and the City Council would support their protection. Any proposal to reduce protection for hedgerow habitats or to allow burning of habitats should be matched by strengthened measures for species recorded to be endangered, vulnerable and near threatened. For example, the Gatekeeper relies on hedgerow habitats.

Need for hedgerow surveys

It is recommended in the National Biodiversity Action Plan under Action 9.3 that '*Hedgerow surveys will be continued by local authorities*'. The DCC Biodiversity Action Plan lists hedgerows as a priority habitat for conservation. As such, it is recommended that specific funding be allocated to enable local authorities to fulfil these obligations under national and local targets for biodiversity.

I trust these views and suggestions will be taken into consideration as part of your review process.



Jim Keogan
Assistant Chief Executive.