

**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: Submission from
Irish Uplands Forum**

1 Background

1.1 IUF perspective

The mission of the Irish Uplands Forum is to promote a community based approach to sustainable development in the Uplands. We identify uplands as generally unenclosed land above 150m which is managed by individuals or more often as commonage. Our members include farmers, environmentalists and recreation interests. In May this year we held a national conference in Dungarvan on the theme of *Who Cares for the Uplands*, the proceedings of which were launched by Ann Phelan, Minister for Rural Development on December 11th 2015 and are on our website (www.irishuplandsforum.org). As our interests are focused on uplands our comments principally relate to controls over burning. It is informed by consultation with our members and particular experience of two of our members who assisted Wicklow Uplands Council (a voluntary organization representing the shared interests of over fifty member groups and individuals) on the preparation of a vegetation management strategy for the Wicklow Uplands (Tubridy and Associates, 2013). We fully support the objective of maintaining and enhancing uplands biodiversity, particularly those features which are of international importance. We are aware that recent assessments prepared by NPWS have shown deteriorations in the status of important habitats and certain protected bird species. We are concerned that climate change will have an impact on bird nesting dates. We know that burning is a traditional management practice which has the potential to significantly affect habitat quality and the status of species. Of particular concern are the potential negative impacts of uncontrolled burning on the quality of heather and status of uplands birds. The integration of farming and biodiversity needs careful attention. Any change in policy must not have any negative effects on wildlife and must support sustainable upland farming practices.

1.2 Upland farming practice

Burning has been used for several centuries as an entirely normal, and, crucially, controlled and managed, tool for upland farmers. Research on this

practice in Wickow revealed that farmers traditionally burnt in spring when conditions allowed. Small patches of low heather (<20cm in dry heath) were burnt to ensure fresh forage for the following years, resulting in a mosaic of grassland and heather covered areas. In GB and in local projects in Ireland (i.e. Grouse Restoration Project between NARGC and NPWS) conservation authorities support the use of burning as a management tool to retain optimum conditions for breeding grouse.

Since the late 20th century there has been growing statutory awareness of the biodiversity value of Uplands. Farmers in Ireland now face particular challenges if they want to continue to use a tool which has been partly responsible for this biodiversity. The establishment of forestry in the uplands was accompanied by regulations governing the management of fire within their environs. Recreational use and house building in the Uplands has increased significantly thus raising the risk to the public from fires.

Farmers in various locations throughout the country believe that the restriction on burning in spring (lessening of burning period by six weeks) now enshrined in Section 40 is unworkable as vegetation and environmental conditions are not suitable during February when burning is now allowed. An examination of the Dáil record during the passage of the 2000 Amendment shows that there was particular concern with the impacts of hedgecutting on hedgerow biodiversity. There was no debate on the impact of the amended act on upland burning practices which for several centuries had been an entirely normal, and, crucially, controlled and managed, tool for upland farmers and which would be severely constrained under the Amended Act. There is no record of any evidence which was provided to justify the change in time when burning is now allowed. The perception among farmers that no evidence was available or even considered has confirmed their opinion that the legislative change was designed to victimise them.

Despite the stricter regime, environmentalists, particularly ornithologists are also unhappy, as farmers have identified them as being responsible for this change. They believe that upland biodiversity is now being significantly damaged by burning carried out by irresponsible farmers.

At the same time as farmers are restricted in burning periods the number of upland farmers has declined thus reducing the potential for traditional controlled burning. The full implementation of EU Directives implies consideration of the biodiversity impacts of burning. While the regulation of burning management has become more complex no support is available to land managers to carry out this operation. The situation is unsatisfactory for biodiversity and farming. Therefore IUF welcome this consultation process which has focused the attention of the authorities on burning and upland management for the first time in Ireland.

1.3 Impacts of change of policy on upland biodiversity and birds

Characteristic upland birds include meadow pipit, skylark, golden plover, hen harrier, merlin, red grouse, grasshopper warbler, whinchat, stonechat and linnet. Some are common and widespread but others are thinly distributed and rare. In contrast to lowlands many birds leave the uplands in winter either to overwinter at the coast or migrate. Thus some are present all year whilst others may be present in the nesting season only.

While there is no recent data on the first laying dates of Irish passerines, waders and other ground nesting birds in the Irish Uplands there is some evidence from GB which suggests that a change in burning dates back to what was set out in the 1976 Act will not have a significant impact on upland bird biodiversity.

Information from the British Trust for Ornithology's Nest Record monitoring programme on first laying dates of species found in the Irish Uplands shows that for characteristic Irish upland species (such as meadow pipit, stonechat, merlin and red grouse) median laying dates are into April and in fact seven of nine upland species have median dates in May. First laying dates for species which are common to both lowland and upland are different and as expected they are significantly earlier in the lowlands. Altitude leads to later breeding dates. There are difficulties about applying the results of GB recording to Ireland, as GB data is not linked to habitats. However it can be argued, particularly in the absence of evidence to the contrary, that the species data is

relevant and that the ranges of timings are applicable to Ireland. Therefore different closed periods are appropriate for lowlands and Uplands and upland nesting upland birds do not need protection from burning until April. There may be variation in first laying dates within Ireland and the possibility of a few statistical 'outliers' - say a meadow pipit pair that lays 2-3 weeks before the rest of the upland pipits.

Climate change must be considered as it is now affecting first laying dates. Evidence principally from GB has shown that first laying dates for many species have become significantly earlier since the 1980s and in general, the trend in uplands is not as marked (though still significant) than for most lowland birds.

1.4 Management of burning in the Uplands

Examination of burning management in GB and NI (Table 1) reveals that Ireland's management regime is less flexible, less farmer friendly and less likely to be informed by evidence on the impacts of burning.

Table 1 Current management of burning in upland areas in GB, NI and Ireland

Country	Dates when burning allowed	Relationship to agri-environmental schemes
Scotland*	1st October to 15th April inclusive. Extended to 30th April on the authority of the landowner. Licensing system allows for derogation.	Grant aid for habitat management plan involving burning according to Muirburn Code.
England**	1 st October to 15 th April. Licensing system allows for derogation	Burning supported as part of Agri-environmental scheme and must follow statutory regulation.
Wales	1 st October to 31 st March (Uplands) 1 st November to 15 March elsewhere. Licensing system allows for derogation.	Burning supported within Agri-environmental scheme
Northern Ireland**	1st September to 14th April. Licensing system allows for derogation	Burning supported as part of Agri-environmental scheme
Ireland***	1 st September to February 28 th /29 th . No licensing system / derogation possible.	No relationship between any agri-environment and burning.

*Burning practice must be according to Muirburn Code

**Burning practice must be according to Heather and Grass Burning Code and Regulations 2007

*** Section 40 of the Wildlife Act (1976) as amended by Section 46 of the Wildlife (Amendment) Act 2000.

Within GB and NI

- Guidelines exist to support land managers in carrying out managed burning so that benefits are optimized to upland management and biodiversity.

- Burning is allowed for a considerably longer period of time, for a period of four to six weeks longer than allowed presently in Ireland and similar to the regime in place under the 1976 Wildlife Act, in England and Scotland.
- In certain jurisdictions there is a difference between burning dates in lowland and upland areas.
- There is generally a provision for derogations or licensing in legislation governing burning management.
- Agri-environmental schemes recognize and provide support for burning operations, thus recognizing its legitimate role in land management.
- Research has been carried out on the impacts of burning on biodiversity (principally heather regeneration and grouse) and ecosystem services (principally carbon loss).

It is worth considering that GB is subject to similar legislation governing biodiversity and citizens include a relatively larger number of people concerned with biodiversity, particularly birds.

2 IUF Response

2.1 Hedgecutting

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

Regulatory guidance should be mindful that hedgerow cutting is not constrained by seasonal conditions in contrast to burning.

2.2 Burning of Vegetation:

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

Current dates should not be maintained as the current regime significantly restricts potential for managed burning in the Uplands and there is no evidence supporting the restriction on uplands biodiversity and birds.

The current regime, by virtue of its perceived lack of legitimacy and evidence base, absence of consultation during its passage through the Dail and failure to recognise the environmental constraints actually operating in the uplands, has possibly led to more uncontrolled burning than before, with an increase in the frequency of illegal unsupervised fire which predictably affects larger areas. This has led both to wasteful commitment of resources from both NPWS and the Fire Service and an unfortunate deterioration in the quality of the relationship between the farming community, environmentalists and the authorities. There is evidence from Wicklow of undergrazing, resulting from inability to carry out controlled burning under the current regime. If this trend continues and becomes more widespread small-scale habitat diversity will be reduced, the quality of upland biodiversity and conditions for upland birds will decline and there will be increased risk of large uncontrollable fires.

IUF believes that regulatory framework must be amended to allow for burning during the optimum period i.e. once vegetation is no longer growing and when weather is suitable, at the end or beginning of the growing season. To allow for both controlled burning and protection of nesting birds, the burning dates

should be amended to allow for this practice to be carried during the entire month of March and ideally until mid April i.e. the period enshrined in the 1976 Act.

2.3 Should different closed periods be introduced for burning as opposed to hedgecutting?

Burning and hedgecutting are traditionally carried out in habitats with different types of biodiversity and sensitivities. While IUF not as familiar with farming practices and biodiversity in lowland hedgerows there is some evidence that nesting dates for upland birds common to both lowland and upland will be earlier in lowland areas. Therefore different closed periods should apply.

2.4. Should different rules apply in different areas e.g. between enclosed lands and unenclosed land - if so why?

In principle we agree that different rules should apply between enclosed and unenclosed areas and that this distinction has the potential to distinguish between Uplands (usually unenclosed) and lowlands (enclosed with hedgerows). However care must be taken to accurately describe the two environments. While a distinction between unenclosed and enclosed land appears to offer a convenient method of distinguishing lowland and upland and is also used by the Forest Service, it is not entirely reliable. In the case of the Forest Service it is always confirmed by an on-site inspection. Upland type habitats are occasionally found in enclosed areas. Enclosure or absence of it may not entirely describe the presence of Upland type habitats.

If used the terms should be clearly interpreted and an explanation should be provided of their relevance to the appropriate management practice and vulnerable biodiversity.

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

Derogations or licensing should be introduced during the closed period to allow for research and for farmers and local groups to take particular

opportunities for management operations. Similar provisions are available for disturbance to species under the Wildlife Act. While it is acceptable to have black line dates, however, the system should allow for local action by groups/organisations as part of a controlled burning group and in association with the implementation of a Management Plan. Weather conditions will have a significant impact on the potential for burning operations.

Any licencing provisions should be subject to consideration of the impact of this derogation or licencing on vulnerable features of biodiversity.

2. 6. 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?

The regulatory process should allow for the provision of flexibility either by SI or Ministerial Order to allow for managers to take particular opportunities for management operations, subject to consideration of the impact of this derogation or licencing on vulnerable features of biodiversity. Whether by derogation, licensing, SI or Ministerial Order the process should be transparent and supported by evidence of its importance for farming and biodiversity.

3 Conclusions

If changes are made to the regulatory regime along the lines advocated here the results will be

- Minimal changes to the first laying dates of upland birds
- Controlled burning of smaller areas will be able to take place thus maintaining upland habitat biodiversity.
- Improved relations between farmers and other interest groups concerned with the uplands as a result of decriminalisation of what had been for decades an entirely normal, and, crucially, controlled and managed, tool for upland farmers.
- Improved potential for controlled burning groups

To maximize the value of these changes it is essential that a commitment is made by the authorities 1) to carry out research on relevant aspects of upland biodiversity and 2) support controlled burning groups. While NPWS has invested heavily in survey work to describe the status of upland habitats listed in EU Directives no research has been carried on this practical and contentious aspect of upland biodiversity management. The establishment of controlled burning groups which emerged from research on vegetation management in Wicklow deserve statutory support.

Research could involve

- Literature review covering Irish upland bird nesting times, habitat and climate similarities and differences between Ireland, GB and NI, burning management history, impacts and potential in Ireland. This should be based on evidence from published research as opposed to biased findings or opinion from sectoral interests.
- Original research by NPWS to determine upland bird nesting dates and examine the impact of burning. The impacts of burning could be immediately examined by using burning records (shape files and date) collected by Enda Mullen in Wicklow Mountains National Park) over the

last fifteen years. If other National Parks have similar information these areas should also be looked at.

- Original research by Teagasc to test methods of managing tall overgrown gorse/ heather including controlled burning in upland areas.

The resources needed to carry out controlled burning effectively were described in the WUC report. This approach to burning will ensure that farming and biodiversity interests are given equal consideration as operations will be carried out by a partnership between land owners and regulatory authorities, informed by an ecological assessment and recognition of the onerous regulatory requirements currently associated with burning. Fire Service personnel are ideally placed to assist with controlled burning and this type of initiative is also supported by the Forest Service. Ideally each location subject to controlled burning should be considered on a case-by-case basis and particularly in designated areas, support should be available from the authorities to enable sustainable burning practice. Changing the burning dates is the first step. It must be accompanied by other measures to ensure optimum relationship between upland biodiversity and burning.

References and websites

The Scottish Government, (2008), *The Muirburn Code: A Guide to Best Practice*,
The Scottish Government, Scotland.

Tubridy and Associates (2013) A Study to Identity Best Management for Upland
Habitats, Wicklow Uplands Council

www.dardni.co.uk