

19th December 2014

Ms. Heather Humphries, T.D.
Minister for Arts, Heritage and the Gaeltacht
7 Ely Place,
Dublin 2.

Re: Review of Section 40 of the Wildlife Act – Burning/Cutting Controls
Submission on behalf of the Cathaoirleach and Members of Kerry County Council

Dear Minister,

I refer to your invitation for submissions on 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.

The Council welcomes your commitment to review the legislative controls and the consultation document, produced by your Department. This document highlights many issues of concern raised by our members, over a number of years, particularly with regard to overgrown hedges on our public roads, and difficulties for landowners on burning vegetation.

Your consultation document was considered at the Council Ordinary Meeting of the 15th December 2014, and the following are the views expressed by the Cathaoirleach and members, and on whose behalf I have been requested to make this submission.

Section 40 of the Wildlife Act is very prescriptive in its primary purpose to protect wildlife. The Council acknowledges the importance of strong legislation to protect our biodiversity but this has to be balanced with the needs of the community in having safe access and some flexibility in carrying out controlled burning of vegetation.

Whilst recognizing the powers vested in the Roads Authority under the Roads Acts, to cut roadside hedges where there is a risk to public safety, given the very significant public road network in our county and the restricted width of many of these roads, the Council is heavily reliant on landowners maintaining their hedges, in accordance with statutory provision. The level of compliance by landowners in Kerry, in this regard, is extremely good, with the vast majority of farmers in particular cutting their roadside hedges regularly, but the restrictions on the periods allowed for cutting in accordance with the provisions of the Wildlife Act, result in many complaints to the Council, particularly during the peak tourism season, when growth is more dominant. In particular the significant growth over the summer months, cause difficulties for an increasing number of cyclists

and walkers using the local road network, which has been a significant growth area for tourism in our county, as well as damage to school buses in early autumn.

In the interest of public safety, the members have requested that you would give serious consideration to amending the legislation to

- a. Permit landowners to cut roadside hedges within 150m of a junction at any time of the year, and
- b. Ease the restrictions on the period for cutting roadside hedges by reducing the closed period to between the 1st April and the 31st July.

In making this submission, members wish to have it acknowledged that their issue of concern is primarily in relation to protecting the safety of vulnerable road users and roadside hedges only constitute a significantly small proportion of the available vegetation for bird nesting.

In relation to the burning of vegetation, significant progress has been made by the Council in addressing uncontrolled gorse fires, through the establishment of the “Kerry Wildfire Interagency Group” in 2012. However, approximately 70% of reported controlled burning takes place outside the permitted statutory period, as weather conditions, particularly in the south west, are often not conducive to the requirements of landowners. Landowners have often stated that the closed period is too inflexible.

The members have requested that consideration be given to extending the period for burning by one month and allow the closed period be set through Ministerial Regulations rather than having it statutorily prescribed in the main Act. These Ministerial Regulations should allow for derogations, if required, in the event of exceptionally poor weather not permitting the burning of vegetation in a particular season or in a particular region.

Any proposed amendment should be complemented with suitable Ministerial Regulations that ensure notification to the Fire Service of all prescribed (Controlled) burning activity within a county. Furthermore, the members have recommended that an education program be provided to landowners on any revisions to the legislation and on the proper burning procedures for the protection of wildlife and property.

The members have also asked if there could be greater publicity on this review and that an extension be given on the date for receipt of submissions. This request was because of our experience of poor responses to consultation processes over the main holiday periods.

Is mise le meas,

Cathal O Súilleabhain, Charlie O'Sullivan
Stiúrthóir Seirbhísí, Director of Services
Oibríochtaí agus Sábháilteacht
Operations & Safety