

Comhairle Contae Chill Dara
Kildare County Council



Review of Section 40
Department of Arts, Heritage and Gaeltacht
7 Ely Place
Dublin 2

An Roinn Ealaíon, Oidhreacht
agus Gaeltachta

9 JAN 2015

Department of Arts, Heritage
and the Gaeltacht

6th Jan 2015

Re: **Submission to the Department of Arts, Heritage and Gaeltacht on review of restrictions**

Dear Sir/Madam

In response to a request by your department to a review of the legislative controls set out in Section 40 of the Wildlife Acts 1976-2012 Kildare County Council makes the following submission.

Background

The Minister for Arts, Heritage and the Gaeltacht has initiated a review of the legislative controls set out in Section 40 of the Wildlife Acts 1976-2012 which govern the cutting, grubbing, burning or otherwise destroying of uncultivated vegetation which includes hedgerows. As part of this review the Minister is seeking the views of the local authority on any changes which should be made to this legislation. The review is concerned with the restricted period for the cutting and burning of uncultivated vegetation.

The current restricted period is from March to the 31st August, during which time it is an offence to cut, grub, burn or otherwise destroy any vegetation growing on any land not then cultivated, see attached appendix for provisions of Section 40 of the Wildlife Acts. There are a significant number of derogations to this restriction such as:

- Removal or cutting of hedgerows during routine agriculture or forestry practices
- Removal or cutting of vegetation for public safety (such as roadside hedges)
- Removal of vegetation for the maintenance of watercourses (for fisheries)
- Removal of vegetation for development of land (such as building houses)
- Removal of noxious weeds
- Removal of threat to forestry

The closed period for the cutting or burning of vegetation was extended in the Wildlife Amendment Act 2000 from 15th April to 1st March. The closed period is the recognised nesting and breeding period for wild birds.

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Landowners are seeking a change to the closed period i.e. earlier than 1st March to allow for burning of vegetation and allow for the cutting of hedgerows in the end of July to allow for the cutting of roadside hedges.

Issues to be considered

The issues being considered are:

- Changing the closed periods
- Having different closed periods to apply to enclosed and unenclosed lands
- Having different closed periods for burning and as opposed to hedge cutting.
- Allowing a derogation during closed period
- Allowing for flexibility in the closed period to be regulated by Ministerial order or regulations.

Submission to the Department of Arts, Heritage and Gaeltacht on review of restrictions

Ireland has obligations under the EU Birds Directive and Wildlife Acts to ensure that birds and their habitats are adequately protected. Recent reports indicate that 28% of Ireland's breeding bird species are currently in decline. Each EU member state is obliged to report to the European Commission on the status of listed habitats and species every six years, under Article 17 of the Habitats Directive. The most recent Article 17 report concluded that 31% of Habitats are in decline

Many birds that use farmland habitats that were previously common have suffered major population and range declines since the 1970's. As a group, farmland birds have experienced some of the largest population declines and range contractions of any bird species in Ireland¹. 18 bird species are of high conservation concern in Ireland of which eight species are associated with lowland agriculture namely Grey Partridge, Quail, Corncrake, Lapwing, Curlew, Barn Owl and Yellowhammer. Corn Bunting, a specialist lowland farmland bird, is the most recent regular breeding bird in Ireland to have become extinct here. Three species are associated with upland grazed habitats; Ring Ouzel, Hen Harrier and Red Grouse.

The timing of agricultural activities such as burning of scrub and cutting of vegetation can have a significant impact on the populations of bird species, in particular those of conservation concern. Suggestions that birds do not nest or rear young beyond the end of July is anecdotal, particularly when there is evidence to suggest that some bird species such as Yellowhammer breed in August. Any changes to the closed periods should only be considered on the basis of sound scientific

¹ BirdWatch Ireland Food Harvest 2020 Stakeholder Consultation Response

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evidence which shows the change will not further negatively impact on farmland or upland bird species.

The current provisions of Section 40 of the Wildlife Acts already allows for significant derogations for agricultural, forestry, fisheries and construction activities. There are also provisions which allow for derogations for the cutting of roadside hedge cutting on Health and safety grounds. Any further diminution of the current restrictions will exacerbate the decline of farmland and upland bird species.

The current closed period for hedgerow cutting, removal of trees or burning of vegetation is established in the practices of the agricultural sector, any changes to or further complication of this provision of the Wildlife Acts will only serve to weaken the current level of protection for nesting and breeding bird habitats.

The proposal to allow for different closed periods on enclosed and non enclosed lands and for different closed periods for burning of scrub and hedge cutting will only lead to confusion and non compliance with the provisions of the Wildlife Act. The proposal to allow for flexibility in the closed season facilitated by Ministerial Order or Regulation will lead to confusion and a lessening of protection over time and facilitate non compliance. The review of the closed period allows for re-consideration of the extensive derogations that currently exist and a review of these derogations in light of the declining number of farmland and upland bird species.

Yours faithfully

Karen Keane
Acting Senior Executive Officer