

Attn Heather Humphreys, T.D.,
Minister for Arts, Heritage & the Gaeltacht,
Department of Arts, Heritage & the Gaeltacht,
7, Ely Place,
Dublin 2.

Friday 9th January 2015

Re: Review of Section 40, Wildlife Act 1976 to 2012
Consultation re Burning/Cutting Controls

Dear Minister Humphreys,

The following is my submission to the above consultation process issued in the context of both my role as founder/coordinator of Landscape Alliance Ireland and my experience as a practicing consultant landscape horticulturalist and designer spanning a 45 year period.

I would note that this is a personal submission rather than one reflecting the agreed views of the small but committed membership of LAI due to the inadequate and inappropriate consultation process timeframe (having a consultation process over the Christmas holiday period suggests a lack of genuine commitment to public participation!)

With regard to the briefing document issued I respectfully suggest that whilst it may address the biodiversity aspects and obligations it would appear to be inadequate on a number of counts which in my view compromise the validity of the process as follows:

- Having account of Ireland's signing and ratifying the European Landscape Convention in 2002 and your own departments launch of the long overdue National Landscape Strategy on the 1st July 2014, it is astounding that no reference was made to the key role played by our hedgerows in defining our distinctive Atlantic bocage landscape and indeed how our management of our hedgerows and uplands contributes to the character and rich diversity of our field, hill and mountain landscapes.
- Having account of the complex framework that currently exists with regard to the management of our hedgerows the briefing document does not adequately outline the contorted situation that pertains. For example Section 40 exemption (2.1 a) and to a lesser extent (2.1.b) could be interpreted as permitting hedge cutting during the closed period for both the agriculture and

forestry sectors. However the Single Farm Payments (SFP) steps in to address this lack of clarity in section 40 of the Wildlife Act.

- It appears to me that the wording of the Roads Act 1993 Section 70 (2) (a) taken in conjunction with (2) (b) and the Wildlife Act 1976/2000 exemption (c) could be interpreted as authorising all landowners to trim potentially hazardous hedgerows whenever necessary including during the 'closed period'. Clarification would be useful here as it would appear that obligations under the Single Farm Payments process would be subsidiary to the Roads Act?
- I would note that the wisdom of the change in established practice that I think occurred with the 1993 Roads Act might have been questioned in the briefing document. I think the practice prior to that Act was for local authorities to cut all roadside hedgerows. This in theory provided an integrated consistent planned hedgerow management process priorities could be more easily balanced. The current situation is very 'hit and miss' with profound implications for both natural heritage and road safety.
- The reference to the extension of the closed period in the Wildlife (Amendment) Act 2000 might usefully have been elaborated on as it related to effects of climate change and the increasingly mild winters experienced since the enacting of the 1976 Act with birds nesting much earlier. It might have been noted that this pattern has continued. I personally witnessed a robin constructing a nest in late December 2013/early January 2014 (not subsequently occupied), I also noted birds nesting well into the autumn last year suggesting 2 if not 3 broods in the one year. But these may be exceptions to the norm and there are others more qualified than me to provide the requisite survey data.
- However having account of the increasingly urgent issue of Global Warming/Climate Change it is regrettable that the briefing document did not refer to the carbon sequestration role of our hedgerows (EPA report published last year re same). Further in the context of climate change the role of our hedgerows in moderating wind speeds might have been noted.
- Despite a reference to the fact that '*significant growth occurs during the summer months*' the briefing document failed to adequately differentiate between the relevance of current years tree and shrub extension growth and longer-established woody growth. The reality is that birds rarely if ever construct nests in the current year's growth, so trimming of same may be less likely to disrupt the breeding season – this latter observation would require pilot projects to establish its validity. But in normal garden maintenance current years extension hedge growth is typically trimmed in June/July. I would however accept that there are great variations in the quality of tractor

hedge trimming – depending on both the machine concerned and the operative.

- There is no differentiation in the briefing document between woody vegetation, sub-shrub vegetation and herbaceous vegetation. The latter two often become hazardous along roads before the former and cutting same would appear to represent less of a threat for nesting birds though again I stand open to correction in relation to ground-nesting species.
- The extent of the canopy of the hedgerow does not appear to figure in the current legislation and/or measures. It is relevant as the value in terms of biodiversity, carbon sequestration and landscape character may be higher with wider canopies. Also it might be possible to offset derogation cutting against a wider canopy on the field side of a roadside hedgerow.
- Exemption 2 1 (e) also gives rise to confusion as whilst all building sites appear to be exempt controls are often imposed through the planning system and associated environmental assessment process where relevant. The current closed period does however still provide a benchmark.
- The Wildlife Act appears to be solely concerned with the rural landscape reflecting its 1976 birth. In the interim vast tracts of rural landscape have been urbanised in varying degrees and indeed in the rural landscape there is significant one-off and road corridor urbanisation. The Act should recognise that there are issues relating to the management of hedgerows/hedges/mixed vegetation in urban settings that have complex biodiversity, landscape and management dimensions.

Limited Constrained Questions that we were asked to consider:

In the light of the complexity of the issues raised by this consultation process it appears to me that the questions posed are too simplistic by far and the process should go back to the drawing board. But recognising that the current wheel will probably keep rolling the following are my answers (in red) to the questions posed:

Hedge Cutting

Should the closed period for cutting hedges be changed?

Reply: Whilst the Wildlife Act 1976/2000 appears ring-fenced to some extent in its aims and objectives it appears to provide the baseline benchmark timeframe for the 'closed period' for the protection of birds and as such the timeframe should only be

changed on the basis of proven evidence that the change is in the best interests of the flora and fauna of the state, otherwise the Act becomes worthless. I have not seen such evidence!

If so, to which dates?

Reply: Subject to the afore-mentioned research/pilot studies/evidence it is possible that the commencement and end date for hedgerows should be earlier – possibly February 1 to July 31 and the commencement date for burning to remain the same or possibly be somewhat later?

Burning of Vegetation:

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

Reply: Whilst the Wildlife Act 1976/2000 appears ring-fenced to some extent in its aims and objectives it appears to provide the baseline benchmark timeframe for the 'closed period' for the protection of birds and as such the timeframe should only be changed on the basis of proven evidence that the change is in the best interests of the flora and fauna of the state, otherwise the Act becomes worthless. I have not seen such evidence!

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

Reply: Subject to the afore-mentioned research/pilot studies/evidence it is possible that the commencement and end date for hedgerows should be earlier – possibly February 1 to July 31 and the commencement date for burning to remain the same or possibly be somewhat later?

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

Reply: Subject to the afore-mentioned research/evidence it is possible that different rules might be applied in different areas.

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

Reply: Subject to a sustainable case being made for such derogations they should only be permitted on the basis of the exercise being undertaken by operatives who have undergone a certified training course (Teagasc appear to have a very good

course but it is unclear if it is validated by assessment and certification). It should also be a requirement that the proposed site be assessed by a flora & fauna/ecology expert with an impact assessment being prepared and submitted to the relevant authorities.

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?

Reply: the selective derogation process with inbuilt controls would be far preferable to a blanket ministerial extension.

In conclusion the current review process is piecemeal and smacks a typical rushed poorly presented Irish governance/administration 'kneejerk' response that fails to recognise the complex innate characteristics and sustainable management needs of our hedgerow and upland scrub areas resource. The Wildlife Act 1976/2000 urgently needs an in-depth review and replacement.

I look forward to hearing from you,

Yours faithfully

Terry O'Regan,
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Landscape Consultant & Founder/Coordinator, Landscape Alliance Ireland,