



NATIONAL ASSOCIATION
OF REGIONAL GAME COUNCILS

National Association of Regional Game Councils (NARGC) Submission on the Review of Section 40 of the Wildlife Act - Burning/Cutting Controls

Background

The National Association of Regional Game Councils (NARGC) is the largest game shooting and conservation non-governmental organisation in Ireland. It is the national organisation representing the interests of individuals involved in game shooting. The Association was formed in 1968 and currently enjoys membership of 26,000 individuals. These members, who pay an annual membership fee, are spread throughout almost 1,000 Gun Clubs all over the country – a Club in almost every parish.

The NARGC is a Seanad Nominating Body on the Agricultural Panel. Its individual Clubs are also “Recognised Bodies” under the Wildlife Acts. This is a recognition unique to NARGC Clubs which essentially means that the Clubs are entitled to take prosecutions for offences under the Wildlife Acts. NARGC Gun Clubs are actively involved in the management of ecological features in the Irish countryside. Their work includes the establishment, funding and management of sanctuary areas, game release programmes, upland habitat management, the planting of trees and game crops, the construction of duck ponds and the development of wetlands. Gun Club members actively engage in predator control at the most vital time of the year, early spring, when game and other bird species and their young are most vulnerable. Members also engage in shooting for crop and livestock protection for the farming community.

General Comments

The NARGC welcomes this opportunity to contribute to the review of the legislative controls set out in Section 40 of the Wildlife Acts 1976 to 2012 governing the regulation of burning and hedge cutting. Since the amendments to the burning dates were introduced in 2000, the NARGC has expressed concern about the challenges associated with best-practice habitat management (using controlled burning). The NARGC is of the opinion that more appropriate and flexible regulations concerning the burning of vegetation could reduce the risk of uncontrolled wild fires and incentivise better ecological management for upland bird and animal species.

NARGC Gun Clubs are actively involved in the management of red grouse and other peatland bird species throughout Ireland. Currently, there are in excess of 20 established Gun Club red grouse projects with another 40 sites identified for future red grouse management. Broadly speaking, the objectives of red grouse conservation by Gun Clubs are being achieved *viz* sustained conservation efforts through various management strategies. These include:

1. Providing recommended management practices aimed at increasing the red grouse population.

2. Implementing conservation actions in a manner that meet the needs of red grouse while recognising the potential benefits for wider biodiversity impacts, particularly to other Red list and Annex I bird species (e.g. Hen harrier, Golden plover).
3. Maintaining an atmosphere of cooperation, participation and commitment among NPWS conservation rangers, an Gárda Síochána, landowners and other stakeholders in the development and implementation of red grouse conservation actions.
4. Monitoring bird populations during spring/autumn and continuously preventing unnecessary disturbance, which might affect red grouse such as unsustainable hunting, accidental fires, inappropriate farming activities, dog use, etc.

The vast majority of NARGC red grouse projects carry out careful habitat management through controlled burning in conjunction with NPWS, a Burn Plan and, in some cases, for designated sites, an Appropriate Assessment. The necessity for habitat management is because red grouse require a broad age-range of heather to allow for cover, shelter, nesting and feeding. Hens usually nest in mature heather adjacent to freshly cut/burnt or second year cut/burnt heather, where fresh shoots will be available for chicks. This improved micro-climate is beneficial to the reproduction of invertebrates which are a vital food source for chicks. A patchwork of old and new heather is widely considered as the best management practise for red grouse.

Some of our red grouse projects have obtained excellent results. For example, in the Boleybrack Mountain Red Grouse Habitat Management Project in North Leitrim, some 108 pairs of Red Grouse were counted in January-February (2014) using a tape-lure survey methodology (in accordance with National Red Grouse Survey 2006-2008). This represents 5.1% of the national Red Grouse population, which is estimated to be 4,200 birds. On Boleybrack, there are currently 12.7 birds per km² in comparison to 1.1 birds per km² elsewhere in Ireland (National Red Grouse Survey 2006-2008). The management also creates favourable ecological conditions for a range of other species including Annex 1 species such as (potentially) breeding Hen Harrier, breeding Golden Plover and Merlin. Other species of conservation concern using the project site include Peregrine Falcon, Golden Eagle and Buzzard as well as Skylark, Wheatear, Meadow Pipit, to name but a few.

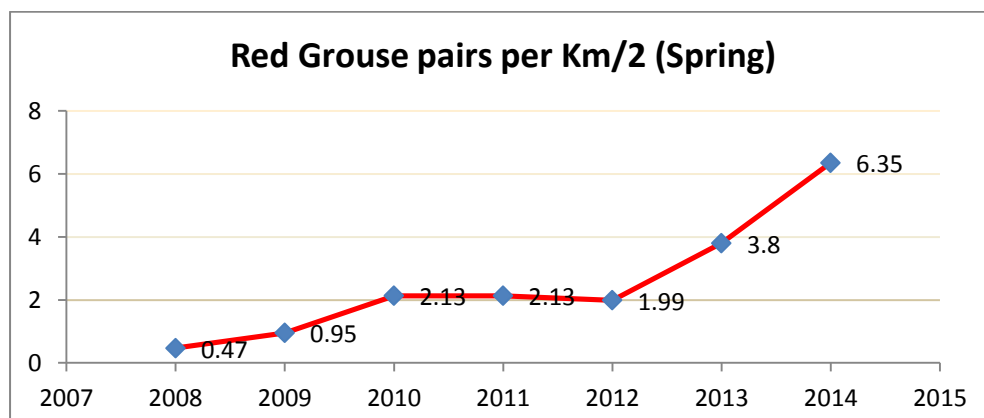


Figure 1. Increase in the Red Grouse population on Boleybrack Mountain as a result of best-practice management.

The Problem

The NARGC is of the opinion that the current controls are ineffective and are leading to widespread uncontrolled burning in the Irish uplands, which has been well documented. There is also a complex human/cultural element at stake in terms of how traditional extensive farming was practiced. In this regard, the current controls appear to be counter-productive in the protection of bird life, vegetation and wildlife habitats during the months of growth and reproduction.

The EU Regulatory Framework

The DoAHG/NPWS consultation document puts much emphasis on EU law and it is clear that the Section 40 provisions have a direct relevance to the protection of hedgerows and other wildlife habitats. However, it is important to remember that 'protection' requires 'management' and this is also clearly set out in EU law. The NARGC feels that the following points are worth consideration:

Article 2 of the Birds Directive states that Member States shall take the requisite measures to maintain the population of the species referred to in **Article 1** (which refers to all species of birds in the European Union) at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level.

In the light of the requirements referred to in Article 2, **Article 3** states that Member States shall take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1. These include the preservation, maintenance and re-establishment of biotopes and habitats and shall include primarily the following measures:

- (a) creation of protected areas;
- (b) upkeep and management in accordance with the ecological needs of habitats inside and outside the protected zones;
- (c) re-establishment of destroyed biotopes;
- (d) creation of biotopes.

Article 4(1) and (2) of the Birds Directive requires Member States to provide SPAs with a legal protection regime that is capable, in particular, of ensuring both the survival and reproduction of the bird species listed in Annex I to the directive and the breeding, moulting and wintering of migratory species not listed in Annex I which are, nevertheless, regular visitors. The protection of SPAs may not be limited to avoiding harmful human effects but must also include positive measures to preserve or improve the state of the area, as the case may be.

Furthermore, Annex I species (e.g. Hen harrier, Merlin) should be the subject of special conservation measures concerning their habitat in order to ensure their and reproduction in their area of distribution. In this connection, account shall be taken of:

- a) species in danger of extinction (e.g. red grouse);
- b) species vulnerable to specific changes in their habitat;
- c) species considered rare because of small populations or restricted local distribution;
- d) other species requiring particular attention for reasons of the specific nature of their

habitat.

In this context, Article 4 of the Birds Directive lays down a protection regime which is specifically targeted and reinforced both for the species listed in Annex I and for migratory species, an approach justified by the fact that they are, respectively, the most endangered species and the species constituting a common heritage of the Community. It is also clear from the preamble to that directive that the preservation, maintenance or restoration of a sufficient diversity and area of habitats is essential to the conservation of all species of birds. Member States are therefore required to adopt the measures necessary for the conservation of those species.

Regarding Hen harrier, for example, NPWS Recommendations (Norris and Wilson, 2007) raise the key importance of habitat which can provide foraging areas for the species:

- In Ireland it is extensive foraging habitat that limits breeding population size. Thus protection and management of the remaining areas of unplanted foraging habitat is seen as a priority for the species' conservation.
- Extensive foraging habitat requirements limit breeding population size making protection of unplanted foraging habitat a conservation priority;
- The best measure of a site's likely future ability to support Hen harriers, once new plantings mature, is the remaining area of heath/bog and rough grassland for foraging¹.

Article 6 of the Habitats Directive is one of the most important articles as it defines how Natura 2000 sites are managed and protected. In particular, **Paragraphs 6(1) and 6(2)** require that, within Natura 2000, Member States take appropriate conservation measures to maintain and restore the habitats and species for which the site has been designated to a favourable conservation status.

More specifically, **Article 6(1)** states that "For special areas of conservation, Member States shall establish the necessary² conservation³ measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual⁴ measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites".

¹ In this context, controlled heather burning can play an important role in maintaining heath habitats for Hen harrier and red grouse.

² A court ruling (Case C-508/04) has stated that a Member State cannot escape from taking all the necessary conservation measures in Natura 2000 sites.

³ The conservation status is also defined in the Directive (article 1). For a natural habitat, conservation status means "the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within the territory referred to in Article 2" (article 1e). For a species, the conservation status means "the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within the territory referred to in Article 2" (article 1i).

⁴ Contractual measures involve establishing contracts or agreements usually among managing authorities and land owners or users in the site.

Article 6(2) contains a general conservation obligation⁵ on Member States by requiring them to avoid, in SACs, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which SACs have been designated insofar as such disturbance could be significant in relation to the objectives of the Directive.

Specific (Irish) Regulations

Section 11(1) and (3) of the Wildlife Act 1976, as amended by the Wildlife (Amendment) Act 2000 provides: “It shall be a function of the Minister to secure the conservation of wildlife and to promote the conservation of biological diversity”. In this regard, controlled burning can play an important role in the conservation of upland habitats.

From an agricultural perspective, payments to farmers under CAP are dependent on the achievement and maintenance of baseline standards set down under cross compliance. The two key elements to cross compliance are:

- I. Statutory Management Requirements (SMRs): These are existing and already legally binding standards defined by a range of 19 European statutory management requirements (SMRs) set down in EU legislation (Directives and Regulations) covering environmental, public health, plant and animal health and welfare standards⁶; and
- II. Standards consistent with keeping land in “Good Agricultural and Environmental Condition” (GAEC) including habitat conservation and soil protection.

Good Agricultural and Environmental Condition (GAEC) is defined in the framework of ‘cross compliance’. In order to ensure that all agricultural land, especially land which is no longer used for production purposes, is maintained in GAEC, European Member States are required to define minimum requirements, at national or at regional level, on the basis of 5 issues and 15 standards (8 compulsory and 7 optional) described in Annex III of Council Regulation (EC) No 73/2009.

In relation to defining GAEC, the European regulations state that all Member States should take into account “the specific characteristics of the areas concerned, including soil and climatic condition, existing farming systems, land use, crop rotation, farming practices, and farm structures” (Council Regulation [EC] No. 73/2009, pg. 9).

The important point to consider in line with GAEC is that the current controls (under Section 40) do not consider the specific characteristics of the areas concerned, including soil and climatic condition, and existing farming systems.

The NARGC and many other conservation NGOs have expressed significant concerns about the loss of valuable habitats for wild birds through uncontrolled burning activities. In upland areas that escape uncontrolled burning; without adequate habitat management (e.g. best-practice controlled burning), and where sustainable grazing is not in place, areas of wet/dry

⁵ Article 6(2) establishes, according to the ECJ, an “obligation of general protection” requiring the avoidance of deterioration and disturbance within SPAs/SACs. Of legal interest is that the ECJ has previously determined in another case against Ireland, that the obligations on Member States under Article 3 (to maintain a sufficient diversity of habitat for wild birds) exist before any reduction is observed in the number of birds and before any risk has materialised of a protected species becoming extinct.

⁶ SMRs have been in place on a phased basis in Ireland since 1st January 2005.

heath are likely to scrub up leading to a range of negative implications for the habitats and species of conservation concern.

Burning of Vegetation

The NARGC wishes to provide the following recommendations:

A. Maintaining the Current Dates

The NARGC is of the opinion that the current burning period as set out in the legislation is unsuitable (i.e. being too short and inflexible). The following points need careful consideration:

1. Traditional extensive farming practices have sustained upland communities and maintained the upland landscape for generations. However, the current provisions are at odds with ‘traditional’ farming practices in the Irish uplands. Traditionally, heather management was undertaken during March and April, as weather conditions frequently did not permit burning during the month of February.
2. Ireland’s climate must be carefully considered in future regulations as the Irish uplands are subject to more precipitation than other parts of Ireland. The following rainfall maps indicate this in greater detail.

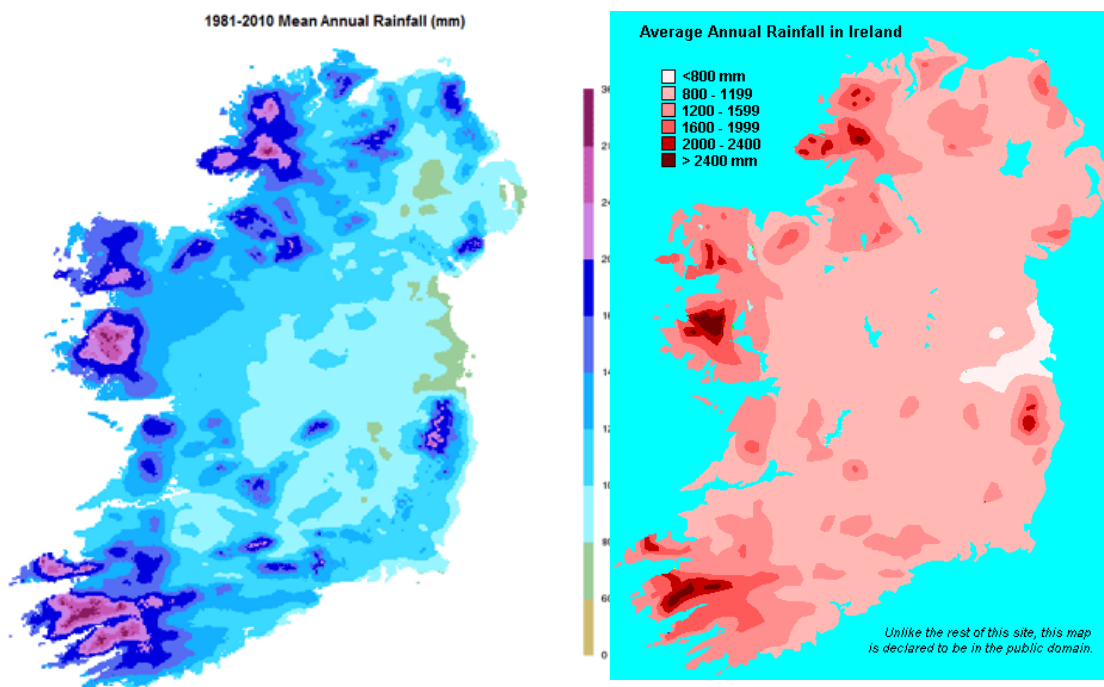


Figure 2. Rainfall in Ireland (Source: MetEireann – www.met.ie)

Of significance is that the key areas, which require the burning of vegetation in Ireland (i.e. the Irish uplands), overlap with the areas of highest rainfall. The maps below indicate this in greater detail.

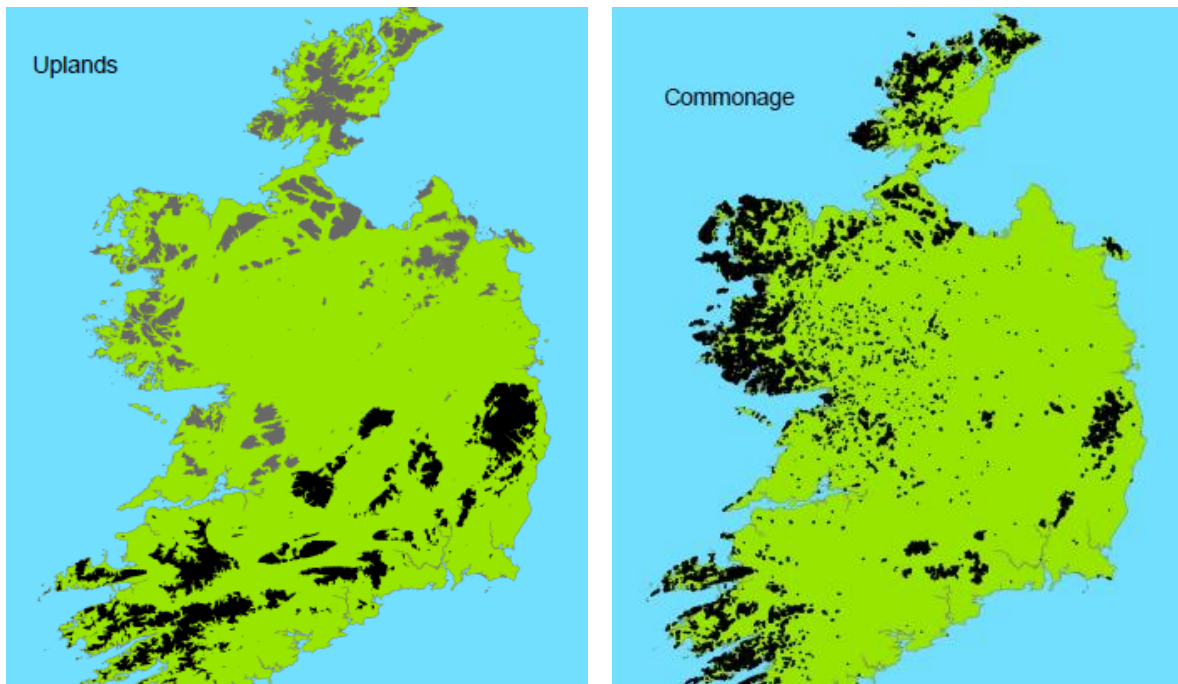


Figure 2. Relationship between unenclosed land (mainly commonages) and Irish uplands, which are subject to higher precipitation (Source: Bleasdale, A. NPWS: Challenges and opportunities. Presentation given Open Forum Discussion at Uplands Community Partnership Conference, Dungarvan, Waterford. 29th May 2014).

3. The NARGC does not want a situation to arise whereby burning could affect ground-nesting bird species. The existing evidence should be examined in this regard and decisions should be made accordingly, which may include regional differentiation.
4. It needs to be highlighted that very different burning dates exist in Northern Ireland.

B. Different closed periods for burning as opposed to hedge cutting

The NARGC is of the opinion that the current closed season for burning should be changed. There are clearly more complex issues associated with burning (i.e. socially, ecologically and climatically), in comparison the hedge cutting. The NARGC does not have an issue with the current hedge cutting closed season.

C. Applying different rules between enclosed lands and unenclosed land

Generally speaking, unenclosed land, which is predominantly commonage, is subject to different ecological and climatic conditions in comparison to enclosed land. There are also numerous practical challenges in terms of organising the best-practice burning of vegetation on unenclosed land. Future legislation must reflect these stark differences and provide flexibility for unenclosed areas.

D. Derogations or licencing for burning be introduced during the closed periods

The NARGC has always maintained that a mechanism should be available to license the burning of vegetation outside of the current closed season (up to a particular date e.g. 15th April). As a precautionary measure, conditions should be put in place to ensure that appropriate survey work takes place in advance of burning and that there is no interference to nesting/laying birds. Licenses should also include the provision of a burn plan.

E. Allow dates to be changed by statutory instrument, or by allowing a Ministerial order to extend the burning period in any particular year

Due to the uncertainty of the Irish climate and weather, which also affects nesting/laying dates, as well as the suitability of burning conditions, it would be ideal if flexibility was introduced to allow dates to be altered occasionally by statutory instrument, or by allowing a Ministerial order to extend the burning period in any particular year.

References:

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