



Review of Section 40
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Submission on Section 40 of the Wildlife Acts 1976 to 2012 Governing Control of Burning and Hedge Cutting

1.0 Introduction

Wicklow Uplands Council sincerely welcomes the call for submissions on Section 40 of the Wildlife Acts 1976 – 2012 governing control of burning and hedge cutting. Since the change in the burning and vegetation cutting dates in 2000, Wicklow Uplands Council has lobbied successive Governments to highlight the effects of the unduly restrictive burning season and to request that the Irish dates urgently be brought back into line with neighbouring countries. The organisation is ideally structured to make a well informed, grassroots contribution to this process. Attached are two reports produced by Wicklow Uplands Council which have informed earlier submissions to government on this issue.

- a) An Initiative to Increase Biodiversity by Reintroducing Best Vegetation Management Practice in the Wicklow Uplands (Wicklow Uplands Council and Wicklow Dublin Mountains Board, 2008)
- b) 'A Study to Identify the best Management of Upland Habitats in County Wicklow' (Mary Tubridy and Associates on behalf of Wicklow Uplands Council, 2013)

<http://www.wicklowuplands.ie/userfiles/file/Final%20Report%20April%202013%20Low%20Res.pdf>

1.1 Wicklow Uplands Council

Wicklow Uplands Council is an independent, voluntary organisation which represents the shared interests of over 50 member groups and individuals. It has four member panels representing farmers and landowners, economic and tourism interests, environmental and recreational interests and communities. The organisation takes a partnership approach to sustainable

development and promotes projects which bring value to people who live and work in the Wicklow Uplands and those who use it for recreational purposes. Our mission is:

'To support the sustainable use of the Wicklow uplands through consensus and partnership with those who live, work and recreate there'.

2. Vegetation Management in the Wicklow Uplands

In the past, controlled burning was the main heather management practice carried out to clear woody vegetation and allow for regeneration of young heather for sheep grazing. In Wicklow and throughout the country, burning traditionally took place at the end of winter/beginning of spring (end March/beginning of April) when last year's growth was dry and easily burnt and before new growth appeared (Pat Dunne, pers. comm.). When weather conditions were suitable and the farmer was on the hill, a small patch of low heather (c. 20-30cm high) was set on fire. This practice was repeated throughout the season when convenient and weather conditions were favorable. Taller heather > 30/40 cm was not burnt. This practice led to a mosaic of small burnt patches and continued appearance of low heather bushes of value as forage. Within Wicklow heather burning was also often carried out by gamekeepers to manage grouse. Upland vegetation is no longer managed by these traditional practices which has left the growth of this vegetation unchecked and action is needed to redress this issue.

Although a large portion of the Wicklow Mountains has been designated as an SAC/SPA, adequate resources have not yet been directed at maintaining or improving the condition of these habitats or enhancing their biodiversity. The national NPWS assessment (NPWS, 2007) concluded that dry heaths were of inadequate status and wet heath and blanket bog were unfavourable (bad) for structures and functions. While no field-based assessment has taken place in Wicklow, a recent report by ecologists (Wilson and Curtis, 2008) has suggested that Upland habitats within the SAC and National Park are also in poor condition.

Throughout Ireland and particularly in Wicklow, traditional hill sheep farming, which is principally responsible for biodiversity in upland habitats, is in decline. Coupled with this has been the rise in the extent and frequency of unregulated burning, resulting in part from restrictive permissible burning dates (in addition to carelessness and vandalism), which has a detrimental effect on biodiversity and agricultural values. Uncontrolled wildfires threaten the conservation status of the Natura 2000 sites including designated SACs and SPAs and pose a serious threat to forestry and private upland properties. If current trends continue, biodiversity values will reduce further and many areas on the lower slopes of the Uplands will become valueless for forage, further increasing the risk of fire.

3. Factors Contributing to the Decline of Upland Habitats in Wicklow

One of the factors contributing to the deterioration of heather management was the introduction of the Wildlife Act 2000, under which the vegetation management season (for burning and cutting vegetation) was shortened by 46 days, starting on the 1st September and

ending on the last day of February. The reduction of the vegetation management season by a six week period was welcomed nationally by groups whose interest was to strengthen the protection of lowland hedgerows as nesting sites. However while there were strong reasons for changing the dates in relation to hedgerow habitat management, this does not apply to management of upland heaths. It should be noted that there was no supporting evidence on the nesting times of breeding birds in the Irish Uplands to support the legislative change to the burning dates in 2000. This decision was not welcomed by farmers and landowners due to the difficulty of burning in upland areas before the 1st March arising from wet ground and weather conditions.

Additionally there was no consultation with Upland farmers when the burning period was drastically reduced in 2000, which added to a reluctance to accept the new restrictions. Additional difficulties in the Uplands include the fact that there are fewer farmers on the hills to assist in fire management and there is often difficulty in accessing these areas.

As recreational use of the Uplands has increased there is greater public concern with all burning incidents. The continuation of burning during the traditional burning period (early spring) has resulted in conflicts between the objectives of farmers and the Fire Service, the Forest Service, ecologists and the statutory authorities, particularly NPWS. Nationally no efforts have been made to address this conflict situation.

Difficulties with vegetation management are compounded by the decline of sheep farming in County Wicklow, with the expected result that heather growth is almost totally uncontrolled.

Commercial forestry plantations established in many parts of the uplands also place additional restraints on heather burning in surrounding areas. The issues created by uncontrolled vegetation (mainly heather and gorse), include the threat of wildfires to property owners and upland dwellers, restricted access for walkers, reduced grazing for livestock and the loss of biodiversity.

4. A Local Response in the Wicklow Uplands

In response to the challenges facing the Uplands, cross community discussions have been taking place in Wicklow over the last four years to develop a new consensus based approach to upland management which seeks both to restore biodiversity and support a recovery in upland farming. Facilitated by Wicklow Uplands Council, a working group with representation from local and national stakeholders including NPWS, Teagasc, the Irish Uplands Forum and local farmers was established in 2011 to address these issues. This culminated in the production of a LEADER funded 'Study to Identify Best Management of Upland Habitats in County Wicklow' prepared by Mary Tubridy and Associates on behalf of Wicklow Uplands Council. The report outlines key recommendations which are critically poised in light of the current review of the Common Agricultural Policy as follows:

- A locally targeted Sustainable Uplands Agri-environment Scheme (SUAS)

- A change in the permitted dates for controlled burning of vegetation and the establishment of controlled burning groups.
- Parallel Study Areas - to identify novel and cost effective practical management techniques to maximise the benefits to biodiversity and upland farming.
- Research Needs and Policy Changes

Q1. Hedge Cutting - Should the closed period for cutting hedges be changed? If so, to which dates?

The closed period for hedgecutting is not at the forefront of the Wicklow Uplands Council agenda and as it is an entirely separate land management practice to the burning of vegetation we do not wish to comment on this aspect of the legislation. However, it should be noted that hedgerow cutting is not constrained by seasonal conditions in contrast to burning. Cutting of vegetation on upland areas is also difficult under wet ground conditions.

Q.2 Burning of Vegetation:

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

No, the current Irish dates urgently need to be brought back into line with neighbouring countries (see table 1. below), which have similar types of habitats and environmental conditions. It is recommended that the dates which operated prior to the amendment to the Wildlife Act in 2000 be reinstated i.e. that burning be permitted from 1st September to 15th April. This is also in line with the dates for Northern Ireland and would result in one burning season for the island of Ireland.

The significant difference in the current burning dates in the North and South of Ireland highlights the issue further especially in adjoining areas e.g. Farmers on the Cooley Peninsula, County Louth who cannot burn in the Cooley Mountains after the last day of February can look at farmers across Carlingford Lough legally burning vegetation in the Mourne Mountains to mid-April.

Current Heather Management Legislation in Ireland and UK

Table 1. below outlines dates when burning is permitted in the UK and Ireland and reflects the apparently arbitrary dates on which burning is permitted in Ireland. The limited time for burning in Ireland is considered unduly restrictive and unworkable by many upland farmers. It should be noted that with the exception of Ireland, all the other countries have a licensing system, which allows for derogation outside the prescribed burning dates and burning is supported as part of an Agri-Environmental Scheme. Wicklow Uplands Council recommends that Ireland take a similar approach to controlled burning.

Table 1. Current management of burning in UK and Ireland

Country	Dates when burning is permitted in the Uplands	Relationship to Agri-environmental Scheme
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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 which follows 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 regulations.
Wales	1 st October to 31 st March (Uplands) 1 st November to 15 March elsewhere. Licensing system allows for derogation.	Burning supported as part of 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 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

*** Under Section 40 of the Wildlife Act (1976) as amended by Section 46 of the Wildlife (Amendment) Act 2000, burning vegetation in uncultivated land from 01 March to 31 August is illegal.

The Case for Extending the Burning Season

The current dates ending at the end of February are very restrictive with very few suitable days, if any, each year to carry out burning within the legal period. This is having two negative results:

Result 1: Absence of Controlled Burning

Little or no controlled burning at all is being carried out. Since the new legislation was enacted in 2000 there has been a notable decline both in controlled burning and sheep farming in County Wicklow with the expected result that heather growth is almost totally uncontrolled. This is causing a build-up of large areas of woody heather and gorse, a reduction in the condition of habitats and loss of biodiversity. The overgrown vegetation creates problems for sheep grazing and wildlife as heather becomes woody with age and indigestible. There is also an increase in the amount of combustible material with the result that when fires do break out there is so much fuel there that it is almost impossible to control or stop these fires.

Sustainable management of heathlands through a balanced regime which comprises a mix of sensitive burning, low intensity grazing and swiping can create a mosaic of valuable habitats that provides nesting and feeding ground for important species of ground-nesting birds. It is recommended that the period for cutting or swiping of vegetation be extended alongside the burning dates to 15th April as per the original legislation.

Result 2: Uncontrolled Burning

Uncontrolled burning is carried out outside the legal period. Due to the criminalised context in which burning often currently takes place, the great majority of upland fires are now less likely to be controlled. Fires burn uncontrolled until the Fire Service is called to manage/extinguish them. They usually happen during the summer months when vegetation is drier and the risk of large fires spreading is greatest.

Large fires are more difficult to control and do not achieve the desired outcome for farming or biodiversity. Instead of a mosaic of small patches of old and young heather with wet and dry grassland, upland pastures will either fall into the tall-heather category (be unburnt) or have very extensive areas with no mature heather – often with accompanying soil erosion because uncontrolled fires have been too hot. In the latter cases the seed bank is often destroyed and heather can be very slow to recover. There is also a strong danger of heather being replaced by poor quality mat-grass, bracken or, (less frequently in Wicklow but commonly in western counties) white grass (*Molinia*).

It is likely that unless the overgrown heather problem is tackled, there is a serious risk of a major fire in the Wicklow Uplands, especially following a long period of dry conditions. Indeed, uncontrolled burning occurs frequently in the Wicklow Uplands leaving large areas devastated despite and probably partially because of the change in the legislation in 2000. The risk that very large areas of upland habitats will be destroyed must also be taken into consideration when the burning dates are being reviewed balanced against the approach recommended by Wicklow Uplands Council to undertake smaller controlled burns to create a mosaic of habitat structures on hill units as part of an overall management plan to improve the condition of upland habitats.

The risk of massive wild fires is also a major health and safety concern for local people and poses a significant threat to forests and other property adjoining open mountain, not least the upland habitats that the legislation aims to protect. As witnessed by local authorities and property owners across the country over the last few years, the cost of dealing with wildfires is significant.

Decline in Protected Habitat Condition

Ireland has a responsibility to maintain and improve the condition of its protected habitats which according to the Article 17 Report under the Habitats Directive are in decline. While no formal field based assessment has been carried out, desk based assessments carried out by the NPWS in 2007 concluded that the upland habitats found throughout the country and also present in Wicklow were in poor ecological condition (NPWS, 2007). The authors of the desk based review carried out a survey of arctic alpine plants in the upper slopes and summits in the Wicklow Mountains SAC (Wilson and Curtis, (2008)). Their field observations confirmed the results of their desk research. They suggested that grazing should be confined to land below 600m, culling of deer should take place and recreational use, grazing and burning should be

better controlled. While burning impacts were criticized, their report suggested that its absence accounted for the decline of certain rare species.

Farming is needed to retain the characteristic habitats of the uplands and its associated biodiversity. The viability of farming in these areas is currently under threat due to economic pressure. In the Wicklow Uplands Council 2013 study, the difficulty in undertaking controlled burning within the permitted season was cited as a contributing factor to the decline in upland farming. Without controlled burning and grazing the condition of upland habitats is set to decline as the lower slopes of the Wicklow hills will become covered in tall heather impenetrable to walkers and vulnerable to massive fires.

Legislative Protection of Nesting Birds

Given the issues highlighted above, the effectiveness of the current legislation in protecting breeding birds and upland habitats is seriously questionable. Data from the British Ornithological Trust Nest Record Scheme supports the argument that the Irish burning and vegetation management season is unduly restrictive.

The evidence outlined in table 2. below clearly shows that there has been an overall shift towards earlier nesting in both lowland and upland species since 1966, which may be attributed to climate change. However, it should be noted that for some species nesting dates have not changed or occur later. Despite these changes, the mean nesting date for the majority of species shows that they do not even begin breeding (on average) until May. For upland species, mean nesting dates range from well into late April to late May. Nesting range data is also available from the British Trust for Ornithology but not in a readily attainable format.

Table 2. British Ornithological Trust Nest Record Scheme (NRS) Mean Laying Dates for Key Upland and Lowland Bird Species (<http://www.bto.org/volunteer-surveys/nrs>)

Lowland Species	Mean nesting day of the year in 2012 N.B. 1st April is 90 days	Mean Nesting Date 2012	Change between 1966 and 2012 (no. days)	Summer Migrants
Robin	107	17-Apr	-10	
Blue Tit	112	22-Apr	-12	
Blackbird	115	25-Apr	2	
Song thrush	117	27-Apr	0	
Duncock	121	01-May	0	
Chaffinch	121	01-May	-11	
Willow warbler	133	13-May	-8	Summer migrant
House sparrow	137	17-May	-9	
Upland Species				
Stonechat	112	22-Apr	-11	
Merlin	119	29-Apr	-4	
Ring ouzel	128	08-May	-7	Summer migrant
Wheatear	135	15-May	0	Summer migrant
Whitethroat	138	18-May	-10	Summer migrant
Meadow pipit	138	18-May	-2	
Linnet	142	22-May	0	
Whinchat	146	26-May	-2	Summer migrant
Skylark	152	01-Jun	7	

Although Irish data is not available for this spectrum of key species, the British data is the most relevant data available and is comparable given that the environmental range in UK is very much comparable to Ireland. As a portion of the data is collected in south western England, the data may be slightly skewed towards earlier nesting rather than later nesting.

b) Should different closed periods be introduced for burning as opposed to hedgcutting?

Yes – there is a significant difference in these land management practices and the habitats with which they are associated. There is also plenty of evidence (e.g., from the British Trust for Ornithology's 75 years of data from Nest Record Scheme) that the timing of bird nesting in lowland hedgerows is generally much earlier than in the more exposed upland habitats.

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

No, Wicklow Uplands Council advises caution in applying different rules on different areas such as enclosed lands and unenclosed lands as this does not determine the vegetation type and in practice there may be no difference between enclosed and unenclosed land. Although these terms apply as a general rule of thumb, there are many exceptions e.g. there are examples of unenclosed land in County Mayo going down to sea level. Improved and unimproved land is not a practical definition as land which was enclosed and improved in the past may have been abandoned and be in the process of returning to heather /gorse.

The Forest Service definition of enclosed/improved and unenclosed/improved land for grant payments is one which often requires ecological expertise. The detailed definition of enclosed and unenclosed land provided by the Forest Service is based on the agricultural output forgone if the lands were afforested and lists a number of associated vegetation types. For the purpose of determining suitability for burning, vegetation/ habitat type is the defining factor and this is not always apparent to landowners.

If controlled burning is to be used as one component of a management plan for hill areas supported by a targeted Upland Agri-Environment Scheme under the new RDP it must be practical to do so. It is our opinion that there is no practical definition for differentiation between areas and applying rules to differentiate between areas is not recommended.

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

As per table 1 above a licensing system allows for derogations in England, Scotland, Wales and Northern Ireland. Wicklow Uplands Council recommends that, in addition to the proposed amendment to the Irish burning dates, a licensing system allowing for derogations should also be provided for within Irish legislation. This will result in a practical and flexible system which will allow land managers to respond to changing weather and ground conditions. This is sometimes required when wet weather conditions prevent burning from taking place within the period to 15th April.

Such difficulties were reported in the past even prior to the shortening of the Irish burning season. Wicklow Uplands Council recommends controlled burning as one part of an overall management plan for hill areas. This is likely to be supported through the next RDP by a locally targeted Uplands Agri-Environmental Scheme and planned on a case by case basis under the guidance of an upland ecologist working alongside land owners and managers.

A derogation is warranted for particular sites or specific cases which are linked to an overall management plan for the area. For example, research projects to look at effects of burning on biodiversity at different times of the year and pilot initiatives such as the example of local burning management groups like the Cooley Mountains Group.

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?

On the basis that the proposed change to extend the burning dates to 15th April is put in place, additional flexibility to allow dates to be changed by statutory instrument or by a Ministerial order is welcomed. This will allow greater flexibility for Ireland to respond to its unique conditions on an annual basis countrywide without having to seek European approval or go through a site specific application for derogation. This is impractical for both land owners and governmental administration on a countrywide scale. It could also facilitate potential future changes to the burning dates as research develops in this area and reviews are needed. It would hopefully prevent a repeat of the last 15 years and allow controlled burning to continue as and when appropriate without having to realise a change in the legislation.

Other Key Issues

In order for controlled burning to be regarded as one aspect of the solution to the improved management of Ireland's upland habitats, a number of key issues should also be considered and provided for:

- A Code of Good Practice for Controlled Burning needs to be developed to support land managers in using this tool as part of management plans for hill areas with the a view to improving the condition of upland habitats in co-operation with upland farmers and landowners. The Forest Service Prescribed Burning Code of Practice for Ireland was developed in 2011 mainly in response to the threat of wildfire to forestry plantations and has a preventative focus. It is of little value to farmers because the approach taken is geared towards larger organisations rather than individuals or small groups of farmers. A Code of Good Practice for Controlled Burning needs to examine and make recommendations on the use of controlled burning as a management tool to improve the condition of upland habitats and explore ways to support land managers with prescribed burning in a positive way. The characteristics of good and bad heather burning practice are outlined in section 3.3.4 of the Wicklow Uplands Council 'Study to Identify Best Management of Upland Habitats in County Wicklow'.
- Research on the relationship between biodiversity and burning in the UK/Scotland has been well researched as heather burning is closely associated with grouse management and codes of good practice have been developed in Scotland, England and Wales which have been endorsed by farmers and ecologists.

- Burning operations are closely regulated to meet the requirements of legislation concerned with wildlife, forestry and public safety – see section 3.3.2 of the 2013 Wicklow Uplands Council 'Study to Identify Best Management of Upland Habitats in County Wicklow' for further details. The implementation of these regulations imposes an almost impossible bureaucratic burden on land managers. No advice is available on the preparation of burning plans or identification of fire sensitive areas. The study report also recommends the establishment of local burning management groups involving key stakeholders to support landowners in undertaking controlled burning safely and according to best practice. These groups need to be facilitated, resourced and supported in a meaningful way. In the Cooley Mountains an informal network was established between farmers, the local fire service and local NPWS staff to carry out controlled burning in an Upland area in 2011. However, due to the limitations of weather, burning was not carried out and the network was dissolved due to lack of institutional support, access to resources and limitations of the burning period (Matthew Mc Greehan, Louth IFA, pers. comm.). A pilot grouse management project involving NPWS, environmentalists and the game management sector on Boleybrack Mountain Leitrim has been more successful in carrying out controlled burning and its success suggests the importance of institutional support (particularly NPWS) and resources to employ a specialist / administrator to manage the bureaucracy associated with prescribed burning and its operation.
- Given the additional restraints on vegetation burning in areas surrounding forestry plantations in many parts of the uplands, Wicklow Uplands Council welcomes the introduction of The Forestry Bill 2013 which requires forest owners to install and maintain fire breaks around their forest boundary. It is imperative that this practice is implemented, monitored and associated with all grant payments and felling licenses to forest owners.
- Insurance obligations require that the individual carrying out controlled burning has adequate insurance. The issue of insurance also needs to be negotiated and supported at Government level as this is difficult to attain at a reasonable price.

Conclusion

There is currently a lot of pressure being put on farmers to control overgrown vegetation on their land to qualify for direct payments under the new Basic Payment Scheme, Areas of Natural Constraint and the GLAS scheme. This will lead to more burning in the coming years. If the dates are extended, this will make it practical to burn legally and landowners will be more likely to plan and manage smaller fires on an annual phased basis resulting in better recovery in habitat post burn and less chance of large uncontrolled wildfires.

With the decline of upland hill farming in Wicklow management plans for upland areas/ hill units urgently needs to be supported through a targeted Agri Environment Scheme for hill areas. The provision for these locally targeted schemes under the new Rural Development Programme is welcomed by Wicklow Uplands Council and it is hoped that the Wicklow Uplands will be selected for these schemes. Controlled burning and cutting of vegetation are key tools which must be facilitated and made practical to implement if the success of these schemes is to be ensured.