

# CONSULTATION

## Response Document



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### Consultation on the Implementation of Section 7(1) of the Heritage Act 2018

Department of Culture, Heritage and the Gaeltacht

31 January 2019

## Introduction to CIEEM

The Chartered Institute of Ecology and Environmental Management (CIEEM), the leading membership organisation supporting professional ecologists and environmental managers in Ireland, the United Kingdom and abroad, welcomes the opportunity to participate in this consultation process.

CIEEM was established in 1991, received Chartered status in 2013, and has 5,000 members drawn from local authorities, government agencies, industry, environmental consultancy, teaching/research, and voluntary environmental organisations. The Chartered Institute has led the way in defining and raising the standards of ecological and environmental management practice with regard to biodiversity protection and enhancement. It promotes knowledge sharing through events and publications, skills development through its comprehensive training and development programme and best practice through the dissemination of technical guidance for the profession and related disciplines.

Amongst others, CIEEM is a member of:

- Irish Forum on Natural Capital (working group member)
- National Biodiversity Forum (Ireland)
- The Environmental Science Association of Ireland
- Europarc Federation
- IUCN – The World Conservation Union
- Professional Associations Research Network
- Society for the Environment
- United Nations Decade on Biodiversity 2011-2020 Network
- The UK All Party Parliamentary Group on Biodiversity
- The UK Environmental Policy Forum
- Greener UK

CIEEM has approximately 250 members in Ireland who are drawn from across the private consultancy sector, NGOs, government and semi-state agencies, local authorities, academia and industry. They are practising ecologists and environmental managers, many of whom regularly provide input to and advice on land management for the benefit of protected species and biodiversity in general.

## Comments from CIEEM

CIEEM welcomes the opportunity to participate in the consultation process by the Department of Culture, Heritage and the Gaeltacht (DCHG) on the Implementation of Section 7(1) of the Heritage Act 2018. We would like to make some considered comments on the draft consultation documents: Wildlife (Burning of Vegetation) Regulations 2018 and Best Practice Guidelines for Burning Management, as follows:

### Comments from CIEEM

#### General Comments/Observations

The *National Biodiversity Action Plan 2017-2021* lists illegal burning as one of the main “pressures and threats” to biodiversity. CIEEM considers that best practice management of burning, together with strict regulation and enforcement are essential for the protection of biodiversity in this regard and welcomes the Department’s efforts to address this. However, CIEEM has a number of particular concerns in respect of the Wildlife (Burning of Vegetation) Regulations 2018 and Best Practice Guidelines for Burning Management, as proposed, which are as follows:

#### 1. Best Practice Guidelines for Burning Management

- a. There appears to be no specific requirement for landowners to adhere to the Guidelines and no approach for consenting individual projects. Therefore, there is significant concern that any extension in the allowable burning period has the potential in turn to increase the potential for ecological impact as a result of non-adherence to Best practice Guidelines. For example, either undertaking large burns or burning areas of blanket bog.
- b. Further, as recommended by CIEEM in 2015<sup>1</sup>, *“A site-specific burn-management plan that sets out appropriate controlled burning methods, is informed by suitably qualified/experienced ecologists and agreed with NPWS would be more appropriate in terms of biodiversity protection than a blanket closed/open season”*.
- c. Until the Heritage Bill was enacted burning was allowed in the months of September to February inclusive. This included the Autumn and, as stated in the Guidance “heather generates more successfully after Autumn fires”. It is considered unlikely that the conditions favourable for burning (weather, ground conditions) cannot be met during this five-month period. It is therefore not clear why it is necessary for the period during which burning can be permitted to be extended into March, for some parts of the country. In contrast, the extension of burning into March, presents a clear risk to upland breeding birds and may favour regeneration of grasses over heather.

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<sup>1</sup> CIEEM (2015) Review of Section 40 of the Wildlife Act - Burning/Cutting Controls

- d. In addition, the proposal for burning during March has the potential to impact on nesting birds (which are likely to be on territory in March). Taking account of this, it is considered that it may be in contravention of Article 5 of the Birds Directive (Directive 2009/147/EC) which states: *“Without prejudice to Articles 7 and 9, Member States shall take the requisite measures to establish a general system of protection for all species of birds referred to in Article 1, prohibiting in particular: (d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive.”*
- e. CIEEM therefore considers that the proposal for burning during March contradicts the Best Practice Guidelines for Burning Management for the following reasons:
- The Guidelines cite red grouse, hen harrier and golden plover as a basis for the need for heather burning (Page 2). All three species have the potential to be holding territory in March, regardless of egg-laying period. Impacts on breeding birds are not confined to direct loss of nests, with disturbance or changes in suitability within territory areas during spring a potential significant impact.
  - The Guidelines (Page 4) state that *“It should be noted that heather regenerates more successfully after autumn fires”*. It is suggested in some references that *Molinia* may benefit from Spring fires, thus potentially enhancing the area for upland grazing at the expense of heather and the species that it supports. Again, this is not compatible with the purported aim of the draft Guidelines.
- f. CIEEM notes that BirdWatch Ireland (BWI) has presented a coherent, clear and informed case for not allowing burning in March. While they acknowledge that although egg laying for most upland bird species does not begin until April, March is when birds begin to locate suitable nesting sites, construct nests and uphold territories (Copeland, 2015)<sup>2</sup>. This point is clearly illustrated with known egg laying dates for 8 upland bird species, all of which are of conservation concern and include Curlew, Golden Plover and Meadow Pipit which are Red Listed; the others all being Amber listed. The egg laying dates are derived from UK British Trust for Ornithology data and it is pointed out that no such data exists for Ireland. Such data is required to allow an informed assessment of the impact of burning on ground nesting birds of the Irish uplands.
- g. The extension of the burning period has the potential to impact on protected species such as common lizard. It is understood that the Scottish Herpetological Strategy mentions that burning is a problem for reptiles just when they are coming out of hibernation. Also, in this respect, Jofré, G.M. & Reading, C.J. ((2012) An assessment of the impact of controlled burning on reptile populations ARC Research Report 12/02)) state the following: *“Spring and summer fires, either accidental or due to arson, are likely to be more harmful as the reptiles will have to confront the impacts directly rather than having several months e.g. over winter to ameliorate habitat conditions. However, it is currently accepted that when managed burning is carried out during late autumn and winter, as required by law, its adverse direct effects on the fauna are minimised”*.

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<sup>2</sup> BWI, 2015, Review of Section 40 of the Wildlife Act: Burning/Cutting Controls

- h. In general terms, therefore, there are significant risks of ecological impact as a result of allowing burning to be undertaken in March. There is no clear approach in Ireland for consenting or clearing individual proposed burns, unlike in other jurisdictions (e.g. Scotland), which further exacerbates the potential for impact.
- i. CIEEM welcomes the possibility that legal burning practises can be adaptable to local conditions. However, it is unclear how this might be achieved.
- j. In order to encourage landowners to adhere to understand and to adhere to the Best Practice Guidelines, they need to be given opportunities to see controlled burning being carried out in different habitat types.
- k. It is suggested that it might be useful for the Guidelines could be summarised in a step by step format (graphic perhaps) for clarity, notably in order to allow for an audit trail as to how they have been complied with.

## **2. Wildlife (Burning of Vegetation) Regulations 2018**

- a. CIEEM considers that the text of the draft Regulations 2018 is inadequate. For example, that for clarity, in addition to referring to the Heritage Act 2018, which amended the Wildlife Acts 1976 to 2012, it is considered that there should be some reference to the said Wildlife Acts and the relevant sections of same. In addition, there is no reference to the period during which burning is not permitted, nor is it stated that burning within the closed season is illegal. It would be useful to include a clause within the Regulations that clearly sets this out.
- b. There is no apparent assignment of legal responsibility for the monitoring policing and enforcement of vegetation burning. This needs to be clarified. It is suggested that it should be assigned to An Garda Síochána, with support from the DCHG and Dept of Agriculture, Food and Marine (DAFM).
- c. Legal responsibility for the monitoring of vegetation burning should be assigned to a government department, with records being kept of all controlled burning carried out, of the years in which burning takes place (in order to ensure that burning is not carried out more frequently than every 12 - 20 years), the area of land affected, and whether any important habitats or species are affected etc. The release of greenhouse gasses should also be estimated, and included in the State's emissions reporting.
- d. Where vegetation is burned in the remainder of the nesting season, a procedure for the investigation and prosecution of landowners should be put in place. Currently when illegal burning during the nesting season is reported, there is no evidence that these activities are subsequently investigated, or that landowners are prosecuted. It is recommended that this situation should be addressed and rectified.
- e. A penalty for the burning of vegetation in the remainder of the nesting season must be set out clearly. Section 74 of the current Wildlife Act 1976 (as amended) provides a list of penalties for the contravention of various articles, but Article 40 does not appear

to be explicitly listed in relation to any penalties. This presents a significant barrier to the prosecution of any landowners that intentionally carry out burning during the nesting season.

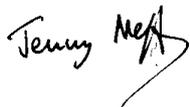
## Specific comments /observations in relation to the text of the Best Practice Guidelines for Burning Management

Best Practice Guidelines for Burning Management	
Page	Comment /observation
Page 1	<p>The Guidelines state, 'Ground nesting birds can benefit from controlled burning' and describe how habitat management is important for Hen Harrier, Red Grouse and Golden Plover.</p> <p>It is noted that BWI point out that "the appropriate management of heather through grazing regimes and other vegetation practices such as flailing and 'managed' strip/patch burning (where necessary) can benefit Red Grouse and with more mixed outcomes for other upland breeding birds such are Merlin, Meadow Pipit, Skylark, Snipe, Golden Plover, Dunlin and Curlew [my emphasis]" This statement by BWI is supported by several scientific references. The use of burning for upland management and its benefits to biodiversity requires discussion, supported by research (published or new), particularly given the proposed extension of burning into March. This is especially apparent given that there is some difference in view as to how beneficial burning is to upland breeding birds and given the conservation status of the birds in question.</p>
Pages 1 -3	<p>Does the DCHG expect landowners to carry out burning for the enhancement of biodiversity? It must be acknowledged that most landowners are engaged in agriculture, and not nature conservation. If the DCHG expects landowners to enhance biodiversity, then financial incentives must be available to do so, and burning should be planned in association with a specialist ecologist.</p>
Page 2	<p>It is considered unreasonable to expect a landowner to be able to differentiate between different habitat types, e.g. blanket bog, humid mires, wet heath, as this is a highly-specialised task.</p> <p>If the DCHG require landowners to take account of such habitats, they must direct the landowner to commission a survey from a specialist ecologist.</p> <p>Not taking account of such habitat distinctions runs the risk of a lack of compliance with the Best Practice Guidelines and consequent damage to the habitat.</p>
Page 2	<p>The Guidelines state that "Species listed in the Flora Protection Order or in Annex 2 of the Habitats Directive should be considered".</p> <p>Again, it considered unreasonable to expect a landowner to identify protected flora or fauna, as this is a highly-specialised task. If the DCHG require landowners to take account of such species, they must direct the landowner to commission relevant surveys from a specialist ecologist.</p>
Page 2	<p>As above, under general comments. The Guidelines cite red grouse, hen harrier and golden plover as a basis for the need for heather burning. All three species have the potential to be holding territory in March, regardless of egg-laying period. Impacts on breeding birds are not confined to direct loss of nests, with disturbance or changes in suitability within territory areas during spring a potential significant impact.</p>
Page 2	<p>Perhaps it would be useful to include reference to other bird species such as meadow pipit that are food prey for hen harrier?</p>

Best Practice Guidelines for Burning Management	
Page	Comment /observation
Page 4	As noted above under general comments, the Guidelines state that “It should be noted that heather regenerates more successfully after autumn fires”. It is suggested in some references that <i>Molinia</i> may benefit from Spring fires, thus potentially enhancing the area for upland grazing at the expense of heather and the species that it supports. contradicts the purported aim of the draft Best Practice Guidelines.
Page 4	As referred to above, under general comments, it is noted that heather re-generates more successfully after Autumn fires.
Page 5	Perhaps it would be helpful to explain that the difference in age class is due to the condition and growth rate of heather. If conditions are poor then a longer rotation would be required.
Page 8	While one ignition point is recommended the images shown appear to show more than one being used. This appears to be contradictory.
Page 10	It is considered that the legal requirements for burning should be set out at the start of the Guidelines. In the present location it is possible that the legal requirements may be overlooked. The exact dates of the open and closed seasons for burning should also be set out clearly (tabulated or graphically). The legal penalties for burning during the closed season should also be set out clearly. This will ensure that landowners are in no doubt as to the legal requirements for burning and their obligations; and for the avoidance of doubt.
Page 10	It is not clear as to whom decides where burning can take place. What criteria will be used by NPWS? It is considered that this needs to be set out clearly.
Page 10	Who will regulate burning in areas covered by European Innovation Partnerships (EIP) agri- environmental schemes in the uplands? This is not clear from Guidelines and should be referenced.
Page 13	Perhaps this would benefit from more details about burning in Boleyrack? E.g. who managed it, background studies, when carried out etc or a reference to a document with this information.
Page 14	Point 3 on this page states that burning should only be carried out by trained and experienced operatives. However, it is not clear how this requirement will be enforced. There are considerable risks to upland breeding birds if burning is not carried out by trained and experienced operatives, particularly so where the season is extended into March.
Page 14	It is not clear how the Minister will decide which parts of the country will be covered by this extension. What procedures will be put in place? More detail is needed here.
Page 15	The Muirburn Code is a ‘live’ document which is updated regularly on their website. It is understood that the most recent version is November 2017. The cited reference to the Muirburn Code therefore needs to be updated with reference to Scottish Natural Heritage (SNH) 2017.  It is suggested that it would be useful to cite (and consider) other documentation /codes of practice / protocols, for example: <ul style="list-style-type: none"> <li>• SNH advisory note “Cutting of heather as an alternative to muirburn” <a href="https://www.nature.scot/information-and-advisory-note-58-cutting-heather-alternative-muirburn">https://www.nature.scot/information-and-advisory-note-58-cutting-heather-alternative-muirburn</a></li> </ul>

Best Practice Guidelines for Burning Management	
Page	Comment /observation
	<ul style="list-style-type: none"> <li>• Natural England publication on The effects of managed burning on upland peatland biodiversity, carbon and water: <a href="http://publications.naturalengland.org.uk/publication/5978072?category=5968803">http://publications.naturalengland.org.uk/publication/5978072?category=5968803</a></li> <li>• Moors for the Future have developed a protocol: <a href="http://www.moorsforthefuture.org.uk/research-publications">Monitoring of Burning in Uplands: A Rapid Assessment Protocol</a>: <a href="http://www.moorsforthefuture.org.uk/research-publications">http://www.moorsforthefuture.org.uk/research-publications</a></li> <li>• Prescribed moorland burning meets good practice guidelines: A monitoring case study using aerial photography in the Peak District, UK - <a href="https://www.sciencedirect.com/science/article/pii/S1470160X15006627">https://www.sciencedirect.com/science/article/pii/S1470160X15006627</a></li> </ul>

CIEEM is the professional representative body of ecological practitioners and environmental managers who record and evaluate Irish biodiversity throughout their work, including within the context of land, habitat and species management. Our members are knowledgeable about the natural heritage of Ireland and CIEEM is therefore well placed to provide input and advice to the Department in respect of the implementation of ecological aspects of the Heritage Act 2018 going forwards.



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