

CONSULTATION

Response Document



Public consultation on review and update of Wildlife Legislation

13th September 2024

Introduction to CIEEM

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

CIEEM was established in 1991 and has over 7,000 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.

CIEEM is a member of:

- Northern Ireland Environment Link
- Wildlife and Countryside Link
- Scottish Environment Link
- Wales Environment Link
- Environmental Policy Forum
- IUCN – The World Conservation Union
- Professional Associations Research Network
- Society for the Environment
- UN Decade on Ecosystem Restoration 2021-2030 Network
- Greener UK
- National Biodiversity Forum (Ireland)
- The Environmental Science Association of Ireland

This response was coordinated by Members of our [Ireland Policy Group](#).

We welcome the opportunity to participate in this consultation and we would be happy to provide further information on this topic. Please contact Jason Reeves (CIEEM Head of Policy) at JasonReeves@cieem.net with any queries.

Wildlife Licensing

1. Additions or changes to derogations or licences for more workable legislation

1.1. Clear guidance on the process of applying for a licence

Guidance should be usable for both applicants and those administering the licences, ensuring a clear and equitable process is followed. Many of our members are using this licensing system, but many have found that it is not uniformly implemented.

1.2. A legislative basis for protected species licences

The Wildlife Act needs to be amended to establish a fit-for-purpose legislative basis for protected species licencing that allows for the protection of species in today's working environment

1.3. Minimum duration of derogation licences of at least 2-3 years or for the full duration of the project

It should be possible to issue derogation licences under the Birds and Natural Habitats Regulations with durations of at least 2-3 years or the full duration of the construction project. Our members have expressed frustration with the derogation licence process, which can create unnecessary uncertainty and burdens for contractors. For instance, a construction project expected to last 2-3 years initially received a 6-month licence, followed by a 4-month renewal. The decision to issue longer derogation licences could be made on a case-by-case basis.

1.4. Clarify legislation regarding nesting birds

The legislative situation regarding nesting birds is unclear. For some construction projects, site clearance during the nesting season is necessary, and best practice involves a survey to detect active nests. Typically, an ecologist conducts a nesting bird survey immediately before construction begins, but if a nesting bird is found, it can take up to six weeks to issue a licence, during which time other species may start nesting. This delay makes it nearly impossible to obtain licences for site clearance works. The introduction of a fast track licensing system for common species would be welcome and ease the burden on the system. This situation highlights the value that guidance on the application of the licencing system and compliance with protection legislation would bring.

1.5. Advance issue of mitigation strategy and licence

Additionally, issuing a mitigation strategy and licence in advance would allow an Ecological Clerk of Works (ECoW) to conduct a survey immediately before clearance, avoiding the six-week delay for licence processing.

1.6. Multi-year survey licences for protected species

Legislation is needed for a formal system of multi-year survey licences for protected species, such as bats, badgers, crayfish, and freshwater pearl mussels. Currently, an informal system allows ecologists to receive fixed-term licences for survey work, but there is no legislative provision for this system, and it is often not uniformly implemented.

1.7. Multi-year survey licences for competent surveyors

Competent surveyors (with qualifications, experience, and species-specific training) should be permitted to conduct necessary survey work, with licences renewed every five years.

1.8. Legislation for 'derogation approval in principle' at the planning stage

Clarity is needed regarding the timing of derogation licence applications, including whether they are required at the planning or construction stage. Current guidance suggests applying only at the construction stage, but the consenting of a proposal without derogation gives an inappropriate weighting to provide derogation at the construction stage. Legislative backing for a 'derogation approval in principle' at the planning stage, followed by a formal derogation at the construction stage, would be welcome.

1.9. A formal legislative role NPWS with strengthened regulatory and advisory duties

NPWS should have a formal legislative role in the planning process in a manner similar to the Northern Ireland Environment Agency, for which there is a statutory requirement that they be consulted prior to the submission of a planning application. Not only does this help ensure compliance with regulations, it also gives developers more certainty as they progress through the planning process. Similarly, developers in England have the option to pay Natural England for discretionary advice on applications.

It is essential that the National Parks and Wildlife Service (NPWS) has a more prominent role in planning legislation to ensure the Wildlife Act and related laws function optimally amid legislative changes. Recent

amendments to the Planning Development Bill highlight the need for greater NPWS input. Typically, planners, engineers, and lawyers are usually involved in such processes, but ecologists are noticeably absent. This lack of ecological expertise often leads to failures in biodiversity management. Developers are increasingly recognising that incorporation of the expertise of the ecological profession is crucial for successful and sustainable planning.

There is also a need for a strong, well-resourced regulator with statutory powers to enforce wildlife legislation; alternatively, local authorities must have adequate provision of ecological expertise (see 2.5).

Increased involvement of the NPWS should be enabled by increased resourcing and capacity in NPWS, and other relevant bodies, to implement and enforce wildlife legislation effectively. Those advising on and issuing licences, should have the necessary knowledge and experience to give due consideration to applications. Security of jobs is important to ensure staff retention, continuity, and succession.

Protection of Habitats and Species

2. Legal provisions to better protect habitats and species

2.1. A duty to produce a priority list of habitats and species

There should be a duty to produce a priority list of habitats and species for which avoidance, mitigation, or compensation during development is obligatory, even outside protected areas, as many habitats in Ireland, though not meeting the Annex I threshold, still hold substantial ecological importance and potential. In Northern Ireland, the NIEA has established a list of Priority Habitats and Priority Species, which receive limited protection under the Wildlife and Natural Environment Act. This Act mandates DAERA to publish a list of species of flora and fauna and types of habitats of principal importance for conserving biodiversity. When priority species are present on a site, developers are required to provide mitigation or compensation to satisfy NIEA, in order for the development to proceed. This approach aids ecologists in accounting for ecologically significant features and proxies that lack legal protection.

Similarly, the UK Natural Environment and Rural Communities (NERC) Act 2006, specifically Section 41, which requires the publication of a list of habitats and species which are of principal importance for the purpose of conserving biodiversity.

Such a list should include non-annex woodlands and hedgerows, and habitats acting as stepping stones/corridors/networks between protected sites. Pollinator and other ecologically beneficial invertebrates should also be included in a priority list, if not in the Wildlife Acts or the European Communities (Birds and Natural Habitats) Regulations 2011.

2.2. Engage with stakeholders on Biodiversity Net Gain

The latest draft of the National Planning Framework (2024) stipulates only No Net Loss (NNL); however, this does not address the reality that most organisations will want to apply Biodiversity Net Gain (BNG) in order to meet the requirements of the EU's Corporate Sustainability Reporting Directive (CSRD). Developers need and want certainty regarding BNG; the government must engage with stakeholders and take a lead in managing the inevitable introduction of BNG — in some form — to Ireland.

2.3. Review and clarify the exemptions to Section 40 of the Wildlife Act

Section 40 of the Wildlife Act includes a range of exemptions, such as for construction projects and road maintenance. These exemptions make it challenging to understand when restrictions should be enforced. First-hand experience indicates that these exemptions can lead to unnecessary and unsupervised destruction, particularly for activities not subject to the planning system. For example, developers often believe they have a blanket exemption for vegetation clearance, even if nesting birds or other protected species are present. The exemptions in this section should be reviewed, and greater clarity provided on the situations in which, and the authorities to whom, they apply. A licensing system could be introduced for construction projects, allowing vegetation clearance if pre-agreed mitigation measures are implemented, e.g. mitigation licences.

2.4. Strengthen monitoring and enforcement of legislation

The consequences for breaking wildlife laws are minimal and do not incentivise compliance. The primary disincentive for developers is negative public attention, which only applies in certain high-profile cases. An example is the clearing of a site before engaging an ecologist, reducing planning risk for developers who know they are unlikely to be penalised. A review of this legislation must include a considered approach to the implementation and enforcement of these laws. While education, awareness, reporting systems, and dedicated wildlife crime officers are important, stringent enforcement is essential

to prevent these activities from being overlooked. CIEEM advocates for a system of financial penalties to prevent such damage, enforced using satellite imagery, a method already employed in agriculture and other jurisdictions. Financial penalties for development companies should be substantially higher than those for individuals.

It is important to ensure adherence to regulations by actively monitoring compliance rather than simply issuing licences without following up with monitoring. This lack of oversight is in part due to NPWS having insufficient personnel to conduct site visits and inspections.

2.5. Legislate for Local Authorities to have sufficient ecological expertise to fulfil their function.

Local authorities have numerous roles in environmental protection, but the lack of expertise within these bodies is detrimental to this function. Our members report that local authorities often lack confidence and expertise in reviewing Appropriate Assessments, leading to an excessively precautionary approach. For instance, an applicant's ecologist may conclude the assessment at the screening stage, but the local authority may still request a Natura Impact Statement (NIS) without justification. This forces the ecologist to conduct a detailed assessment for a project where all potential impacts have already been screened out. We advocate for a legislative requirement ensuring that local authorities possess the necessary expertise to fulfil their roles. This could involve establishing a permanent position within the local authority, increasing involvement from NPWS regional staff, or creating a panel of external consultants.

2.6. Legislate for the submission of data records to the NBDC

This review offers a significant opportunity to improve data sharing in the sector. Currently, there's no incentive to share project data, leading to incomplete records and repeated efforts. Some members have been unable to access previous site surveys, resulting in unnecessary repetition and delays. CIEEM advocates for a legislative requirement to submit data records to the NBDC, making information on protected species accessible. While client confidentiality restrictions should apply, CIEEM believes these should be exceptions rather than the rule.

3. Specific species that should be protected in the Wildlife Acts or the European Communities (Birds and Natural Habitats) Regulations 2011

3.1. Pollinators and other beneficial invertebrates

The importance of pollinators for ecosystem services is well-known, but there is no incentive for developers to consider these and other beneficial invertebrates as few have protection under Annex II, aside from Marsh Fritillary. We propose a duty to produce a priority list of habitats and species (2.1): this could include pollinators and other invertebrates, including for brownfield, which is an underappreciated habitat, but one that can be of high value for invertebrates. Many of these species can be considered valuable not just for their scarcity, but as proxies for wider environmental conditions or habitats which need protection, enhancement, and restoration, some of which may have as-yet-unrealised ecological significance.

General

4. Changes to wildlife legislation to better protect against biodiversity loss

4.1. A clear legislative framework for assessing potential impacts within protected areas

Most proposed Natural Heritage Areas (pNHAs) have never been formally designated and thus lack legal protection. Additionally, there is no clear legislative guidance on assessing potential impacts on NHAs, pNHAs, nature reserves, or national parks. A legal process for assessing impacts on these sites would be welcomed. Impacts could be assessed similarly to an Appropriate Assessment. It might be beneficial to align the language with Ecological Impact Assessment or Environmental Impact Assessment (e.g., significant effects) rather than the subjective terms used in Appropriate Assessment. In particular, the legislation should clarify whether direct impacts on the key features of an NHA are legally acceptable and whether compensation can be considered.

5. Inconsistencies or anomalies in wildlife legislation that should be addressed

5.1. Mandatory Air quality assessments for all projects that can impact wildlife.

Currently, the requirement for AQAs only applies to pig and poultry farms over a certain size. There is a need for legislation to take into account all emissions from projects affecting wildlife, including from a cumulative perspective.

5.2. Strengthen legislation to ensure that gathered data is acted upon.

Current legislation on monitoring impacts on protected species is ineffective. Although monitoring is included in plans, there is no requirement to act on the gathered data. We suggest strengthening the legislation to ensure monitoring is actionable.

6. Gaps in wildlife legislation that should be addressed

6.1. NPWS policy statement for any ecological matters that are not covered by legislation

Some points in this response may be addressed by legislation, while others are more suited to policy. In Northern Ireland, Planning Policy Statement 2: Natural Heritage outlines biodiversity-related planning policy, covering designated sites, legally-protected species, priority species and habitats, and other non-protected habitats. This system offers clear guidelines for ecological assessments and necessary mitigation or compensation. It would be beneficial for the NPWS to publish a similar policy statement for ecological matters not covered by legislation.

6.2. Clear guidance on who has responsibility for implementing legislation biodiversity and how

The implementation of the Wildlife Act requires clearer pathways, as its current state leaves too open to legal interpretation, often dictated by case law. Superseded by EU legislation, the Wildlife Act is largely overlooked by legal professionals who regard EU law as more rigorous and effective.

Clear definitions of what constitutes disturbance to various habitats and species, along with guidelines on avoidance and mitigation, are essential. It is also crucial to promote the responsibilities of different actors under the Wildlife Act and other related legislation. Local councils, for example, have specific obligations to protect wildlife and

habitats within their districts, which are often unmet outside the scrutiny of planning applications. This is particularly important for species like the Otter which, despite their resilience to impacts from development, are affected by broader issues such as water quality. Local authorities must explicitly recognise their responsibility to protect habitats, rather than deflecting this duty to under-resourced entities like the National Parks and Wildlife Service (NPWS). The high cost of hiring consultants and the routine delay of publication of wildlife research further complicates the issue. Holding elected councillors accountable for habitat deterioration due to inadequate monitoring can ensure a more effective approach to environmental protection. Developers and councils need a clear directive outlining the implications of the Wildlife Act on their responsibilities, emphasising individual accountability and potential prosecution for violations. Such guidance should provide non-ecologists with explicit information on actions that could lead to legal trouble, highlighting the importance of compliance.

While planning and development are outside the scope of this consultation, it is notable that much environmental regulation falls under planning. Unlike the UK National Planning Policy Framework, which includes clear statements on Biodiversity Net Gain, equivalent legislation in Ireland is lacking.

EU Directives

7. Particular changes that should be made to better reflect European Union Directives

7.1. Align Wildlife Legislation with the EU's Nature Restoration Law

CIEEM welcomes the EU Nature Restoration Law and the development of a Nature Restoration Plan for the Republic of Ireland; the requirements of the NRL should be integrated into the Wildlife Act, as part of a broader effort to better align domestic legislation with that of the EU, including the Water Framework Directive, Marine Strategy Framework Directive, Soil Monitoring and Resilience Directive, and Regulation 1143/2014 on Invasives Alien Species.

7.2. More clarity and specification regarding the protection of Annex I habitats and Annex II species outside designated sites

Currently, protection for Annex I habitats and Annex II species outside designated sites is provided for in County Development Plans and other regional policies. However, the level of protection is at the discretion of the local authority (LA) and can vary depending on the

expertise available within each LA. We would like more clarity and specification on how exactly these are defined within an Irish context, and what protection will be afforded to Annex I habitats and Annex II species outside designated sites?