

# Position statement on peat cutting at designated sites



## **POSITION STATEMENT ON PEAT CUTTING AT DESIGNATED SITES**

*‘The question of turbarry was one of the most difficult and troublesome that landlords or agents had to deal with, and was often the cause of very expensive litigation between tenants.’*

*(The Earl of Belmore)*

*(Extract from Hansard dated 6 August 1896 reporting on the House of Lords debate on the Land Law (Ireland) Bill)*

### **FOREWORD**

#### **The Importance of Peatlands**

1. Our natural environment is of the utmost importance to society, for its intrinsic value and for the many essentials of life derived therefrom; it is important to our health and wellbeing, and indeed to our economic prosperity. Within this environment we have natural units of living things, the animals, including humans, plants and micro-organisms, and the physical environment within which they exist – a coexistence which we now define as an *ecosystem*.
2. Ecosystems of various types are distributed globally - internationally there are tropical rainforests, deserts and coral reefs; and within our own shores we have woodlands, grasslands, heathland, rivers, lakes, our coastal shoreline and peatlands. In many instances, these systems overlap with each other; and there may be interaction between them at local level, or interactions that extend beyond national boundaries.
3. Peatland ecosystems are amongst the most important in Northern Ireland, and we have a particular responsibility to conserve the best remaining examples of blanket bog and raised bog habitats that were once in abundance. Their importance is reflected in the number of nature conservation designations already applied to areas which contain peatland that support characteristic flora and fauna of these types of bogs. In addition, Habitat Action Plans developed by Government seek to improve the condition of peatland sites, both within and outwith designated areas, and these again serve to properly illustrate the particular ecological value and importance of our peatlands.
4. Peatlands in Northern Ireland provide a variety of ecosystem services that are of the utmost importance in many respects. For example, they form a significant carbon store that is a factor in the regulation of our climate, their ability to absorb water helps regulate water flows and reduce the risk of flooding, they host a range of our valued wildlife, they are used for recreational activities, and they are utilised by the agricultural industry.
5. For these reasons, it is most important that our designated sites are afforded appropriate statutory protection and are properly managed for their special nature conservation interests. Consequently, this Position Statement has been issued to provide guidance to Northern Ireland Environment Agency staff engaged in the management of these sites to

ensure that they have proper regard to the statutory obligations placed on the Agency, and give appropriate consideration to the ecological wellbeing of designated peatland sites when issuing determinations within the consenting process described in this Position Statement.

(It should be noted that the preceding paragraphs are provided as general background only to the particular issue of peat extraction, and the information contained therein should not be taken into account by officials when exercising their functions under the Environment (Northern Ireland) Order 2002 in relation to the consideration of a notice of a proposal referred to in Article 32(1)(a) of this Order.)

## **BACKGROUND – LEGISLATIVE PROVISIONS**

### **Environment Order - Statutory obligations relating to Areas of Special Scientific Interest**

6. Northern Ireland Environment Agency (NIEA) has a statutory duty under Article 28(1) of the Environment (Northern Ireland) Order 2002 (the Order) to declare an area of land as an Area of Special Scientific Interest (ASSI) if it is of special interest by reason of its flora, fauna, or geographical, physiographical or other features; and to ensure that these interests are afforded appropriate protection. Article 28(2) of the Order also requires NIEA to issue a statement of its ‘Views About Management’ which advises on how the declared lands should be managed for the benefit of the scientific interest. Although not a statutory obligation under the Order, ‘Conservation Objectives’ are also issued in relation to peatland ASSIs; and these are central to the assessment of the impact of a consent application for the extraction of peat on this interest
7. As part of the statutory ASSI declaration process, NIEA is required by Article 28(3) of the Order to give ‘notification’ of the declaration to the relevant district council in which the ASSI lies, and to every owner and occupier of lands affected. Document B, which forms part of the statutory notification documentation, provides a list of operations and activities (referred to herein as ‘notifiable operations’) that have the potential to have an adverse impact on the special scientific interest of the ASSI. Written consent from NIEA is required in accordance with Article 32 of the Order before notifiable operations are undertaken by the owner or occupier and, importantly, applications for such consent must be considered and reported on by NIEA in the context of the statutory requirements imposed by the Order.
8. In the case of ASSIs that are declared with peat interests, peat extraction is listed as a notifiable operation. There is a potential for peat extraction for fuel and horticultural purposes to be undertaken on a commercial level, and on a smaller scale for domestic heating purposes.

9. Peatland ASSIs may also be subject to the provisions of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended). These regulations apply to ASSI land that has also been declared a Special Area of Conservation (SAC) in accordance with Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora; or classified as a Special Protection Area (SPA) in accordance with Council Directive 79/409/EEC on the Conservation of Wild Birds.

### **ADDITIONAL STATUTORY REGULATION OF PEAT EXTRACTION**

10. It should be noted that peat and peat extraction is subject to other statutory regulation or policy/practice guidance which is additional to that provided in the Order, this is as follows –
  - a. Planning (Northern Ireland) Order 1991 and Planning Policy Statement 2 (PPS 2) which is administered by Planning Service.
  - b. Planning Strategy for Rural Northern Ireland: Regional Planning Policies – Policy MIN 1 Environmental Protection.
  - c. Shaping Our Future – Regional Development Strategy for Northern Ireland 2025 (see SPG-ENV 1: To conserve the natural environment)
  - d. Cross-Compliance Verifiable Standards issued by the Department of Agriculture and Rural Development (see Good Agricultural and Environmental Condition standards).

### **BLANKET BOG DISTRIBUTION**

11. Blanket bog is a globally restricted peatland habitat that is confined to cool, wet, typically oceanic climates. Peat depth is variable, with an average of 0.5-3 metres being fairly typical, but depths in excess of 5 metres are not unusual. Although most widespread in the wetter west and north of Northern Ireland, it also occurs in eastern upland areas.
12. The Northern Ireland Peatland Survey 1988 (NIPS) recorded 142,384 hectares of blanket bog in Northern Ireland. Over half (56%) has been cut over or drained, with only 22,175 hectares remaining intact (15% of all blanket bog). The majority of this was cut by hand in past years, but an increased amount of machine cutting in more recent years is now evident. As the NIPS was generally based on aerial photographs, some of the vegetation recorded as bog may have occurred on shallow peats; and it should also be noted that there may be some overlap with wet heath in the above figure.
13. This peatland habitat also covers large areas of upland Britain, with Scotland having the most with an estimated coverage of over 1 million hectares; followed by England with 215,000 hectares and Wales with 70,000 hectares (UK Biodiversity Group 1999).

## **EXISTING BLANKET BOG ASSIs**

14. Surveys undertaken by NIEA and site declarations have, to date, concentrated on larger areas of intact blanket bog, and 17 ASSIs have it as a feature. In total, these cover approximately 28,000 hectares, with around 13,800 hectares of this being blanket bog. Nine of these ASSIs have also been declared SACs that cover a total area of approximately 9465 hectares. This substantial network of peatland sites includes examples from the main upland areas where blanket bog has formed, including the Antrim Plateau, the Sperrin Mountains and the uplands of west Fermanagh.
15. Although blanket bog is well represented within the current ASSI and SAC network, the extent of the habitat in Northern Ireland, and its international importance, means that further representation within the ASSI suite is required, both to increase the amount of the resource that is protected, and to extend the geographical range of the network. Large sites will be favoured, in addition to those with significant intact surfaces and those with well-developed surface microtopography (pools and hummocks).

## **LOWLAND RAISED BOG DISTRIBUTION**

16. Lowland raised bogs are peatland ecosystems that have developed primarily in lowland areas, usually along river flood-plains and in topographic depressions. There has been major decline in this resource across north-west Europe; and in Great Britain, the area of lowland raised bog retaining a largely undisturbed surface is estimated to have declined from approximately 95,000 hectares to 6,000 hectares.
17. Lowland raised bogs occur throughout Northern Ireland, covering 25,196 hectares (NIPS), and it is estimated that 2,270 hectares of this (approximately 9% of all lowland raised bog) is still intact, with most of the remainder being cut, principally by hand.

## **EXISTING LOWLAND RAISED BOG ASSIs**

18. Currently, there are 25 ASSIs for lowland raised bogs totalling 2,337 hectares in extent, of which around 1,057 hectares are intact (i.e. uncut). Lowland raised bog is well-represented in the Northern Ireland SAC network, with the 9 SACs declared for active raised bog, taking in 13 individual bogs and in the region of 1,537 hectares (of which 671 hectares are intact). As with blanket bog, the international importance of lowland raised bogs requires additional representation, both to increase the amount of the resource protected and to extend the geographical range of the network.

## **EXTRACTION OF PEAT FOR COMMERCIAL USE**

19. Extraction of peat for commercial purposes is subject to approval by Planning Service under the Planning (Northern Ireland) Order 1991 and is, consequently, outwith the NIEA consenting process provided under Article 32 of the Order. NIEA is, however, routinely consulted by Planning Service in relation to planning applications that may impact on an ASSI, and regard will be had to consultation responses provided by NIEA. At present, there are no extant planning approvals for the extraction of peat for fuel from within ASSIs on a commercial scale, and owners or occupiers seeking statutory authorisation for an operation of this nature should be referred to Planning Service.
20. A practise of renting a peat bank on an annual basis for cutting also exists. The definition of minerals in the Planning (Northern Ireland) Order 1991 does not include turf cut for purposes other than sale. Consequently, cutting of peat for anything other than the exercise of turbary rights is likely to amount to development, which would require planning approval.

(The extraction of peat for commercial purposes is not considered further in this Guidance Note.)

## **EXTRACTION OF PEAT FOR DOMESTIC USE**

### **Entitlement to extract peat**

21. Subject to extant statutory provisions, the entitlement to extract peat for domestic use may be exercised by the owner of declared land, or by the holder of a turbary right (referred to hereafter as the ‘occupier’). A turbary right may be described as the right of a person to enter another person’s land to cut and remove peat for use as domestic fuel. Further information on the various types of turbary rights may be found at Annex A.

### **Statutory consenting process for the extraction of peat and associated appeals**

22. The consenting of notifiable operations is a statutory process provided under Article 32 of the Order, and a decision issued by NIEA in this regard is subject to an independent appeals process undertaken by the Planning Appeals Commission (PAC) in accordance with Article 33.
23. Within the consenting process there is a need for the consent applicant, which may be the land owner or occupier, to receive a ‘fair hearing’ in relation to their application; and for the decision on this to be based on sound scientific analysis, that has proper regard to the provisions in the order which requires the special scientific interest to be specially protected. During deliberations on a consent application, particular regard should be had to the views about management and conservation objectives issued in relation to the site. Failure to apply a robust methodology, and appropriately consider all matters relevant to

a consent application, may leave the resultant decision vulnerable to challenge under the aforementioned appeals process.

24. There is also an option for a person who is aggrieved by a decision made in relation to a consent to seek a Judicial Review, which is a form of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. In general terms, a Judicial Review may be appropriate where the challenge is based on an allegation that the public body has taken an unlawful decision or action, and there is no adequate alternative remedy.

## **IMPACTS OF PEAT EXTRACTION ON AN ASSI -GENERAL**

25. The three main methods of peat cutting, namely hand cutting, auger cutting and the digger/hopper method, operate at different scales and each have their own characteristic impacts on an ASSI.

### **Hand-cutting by spade**

26. Hand-cutting of both blanket bog and lowland raised bog for fuel is the traditional method of extracting peat, and it was cut using a specially designed spade in such a way as to allow, with sod replacement, the peat vegetation to continue to grow after harvesting. The use of this traditional practice over time has resulted in extensive cutover areas of blanket bog, many of which presently support actively regenerating bog vegetation. This is generally viewed as the least damaging of the three methods described herein as the scale of operation, and the consequential habitat loss, tends to be relatively small when undertaken on an individual basis.

### **Auger cutting**

27. Auger cutting should, theoretically, leave the surface vegetation virtually intact as peat is extracted subsurface and placed on the bog surface by an extrusion action. In practice however, this tends not to be the case as repeated cutting generally leaves the bog surface bare, as the peat is compressed by the weight of the machinery and the surface tends to become increasingly water-logged. In some situations the slots where the peat has been removed may act as drains causing adverse impacts on the hydrology of the peatland. In addition, extruded peat is often wastefully left in-situ, smothering the vegetation; and the underlying peat becomes unworkable resulting in the operation moving elsewhere, where the cycle commences again.

### **Digger and Hopper method**

28. With this method, peat is sliced from a peat face using a mechanical digger and loaded into a hopper from where it is extruded onto a surface and left to dry. Extrusion using a hopper may take place off-site, which avoids the problem of uncollected turf smothering the underlying vegetation of the bog. The action of the digger is similar to that of

traditional hand-cutting, although the peat face is often left with a ragged edge and appears to be more prone to slumping than that cut by hand.

### **General impacts of peat cutting**

29. In addition to direct loss of the peat resource, peat cutting, and associated site preparation work such as drainage, will lead to detrimental effects on both the vegetation directly affected by the activity, and may cause damage to streams and catchment hydrology over a wider area. Mechanical extraction tends to lead to compression of the top layers of peat causing changes in the bog surface microtopography and disruption to drainage and peat structure. (This not only results in increased water run-off, which may lead to erosion, sediment loading, water colouration and localised flooding, but also to peatland degradation that has the potential to cause climate change through the release of greenhouse gases.)
30. Mechanical extraction thus affects the scientific interest of the peatland by changing the physical characteristics of the peat and this, in turn, effects vegetation composition by reducing species diversity and increasing the amount of bare peat exposed, which may in turn facilitate the establishment of invasive species. (The invertebrate fauna, together with bird populations and nesting patterns, may also be adversely affected.)
31. It should be noted that all forms of cutting, including hand-cutting, cause direct loss of habitat and impacts on the hydrology of the peat. However, the scale of the impact varies considerably, with mechanical methods of cutting obviously facilitating operations much larger than those of traditional hand-cutting; hence the potential for damage to the nature conservation interests is much greater. The impacts of auger cutting are generally more severe than the digger/hopper method, as larger areas are usually involved and, importantly, cutting is often readily moved to adjacent areas when the initial cut surface becomes unworkable.
32. When assessing peat-cutting proposals, it is important to examine the scale, location and proposed method of extraction. It should also be borne in mind that blanket bogs tend to be rather more robust than lowland raised bogs as they are generally larger and, hydrologically, more diverse. Rather than a single hydrological unit (as generally found within a lowland raised bog) blanket bogs generally consist of a series of interlinked hydrological units which may be more or less independent from each other. Proposals for cutting on blanket bog may, therefore, generally be treated in a more favourable way than proposals for cutting on lowland raised bog.

### **Peat extraction with nature conservation benefit**

33. It is possible that some small-scale extraction in an area already impacted may be permitted when there are nature conservation gains to be had. (Peter Kirby, see Annex B). However, there are generally only two situations where peat extraction is likely to be beneficial to the ecology of a site –

- a. Where peat banks have been left well above the water table, have dried and are unlikely to be restored to active bog through a natural process. In such situations, cutting may reduce the level of the peat down to the water table, allowing the surface to re-wet, which would lead to natural regeneration of the bog. However, the preferred course of action would be to raise the level of the water table to allow rewetting of the peat, rather than remove it.
- b. Where peat extraction may facilitate the rejuvenation of peat pools, which often occur on sites where much of the peat has been removed historically leaving only fen peats and vegetation which may be of importance in their own right.

## **IMPACTS FROM MECHANISED PEAT CUTTING - ECOLOGICAL AND HYDROLOGICAL CONSIDERATIONS**

### **General**

34. Mechanised peat extraction technology was introduced into Northern Ireland in the early 1980s and it is estimated that by 1990 machine cutting had affected over 6% of the blanket peat area in some counties (Hamill, 1996). Mechanised cutting can produce a years supply of peat for a domestic dwelling within a few hours.
35. Auger cutting machinery penetrates the surface vegetation, known as acrotelm (see paragraph 51), and extrudes the peat from beneath the rooting layer. The destruction or damage to the acrotelm creates conditions that are not conducive to the recolonisation of *Sphagnum* spp; and *Sphagnum* dominated vegetation is vital to the regulation of the surface wetness and to the redevelopment of the characteristic bog acrotelm (Hamill 1996). Such cutting changes vegetation structure, with canopy and moss carpet structure reduced by successive cuts. The rate of recovery is particularly affected by the frequency of cuts and the time intervals between them. Species composition changes, with some species found to be severely reduced in cover by cutting (e.g. *Calluna vulgaris* and *Sphagnum* mosses).
36. The physical condition of the peat changes; bulk density increases and water content is reduced through the effects of compaction by the equipment used. Studies in Northern Ireland have also shown that machine cutting decreases the height and biomass of vegetation, and that this has resulted in declines in invertebrate populations (O'Hare, T., Woodrow, W., 2004). Although the peatland is directly damaged from the extrusion of peat and the removal of the vegetative layer, the indirect impacts can be just as adverse and may restrict the long term recovery of the peatland.
37. As mentioned above, extraction by the digger and hopper method may provide for the extrusion and necessary drying outwith the ASSI which will avoid the problem of vegetation being smothered by extruded material. The digger cutting action is also likely to create a ragged peat face which appears to be more prone to slumping than that cut by hand.

## **Drainage**

38. The creation of drainage channels is necessary for the extraction of peat on both a commercial and domestic scale; and a wet bog is usually drained to ensure that it supports the weight of the machinery used (Bayfield et al., 1991). Prepared drains may have an impact on drought sensitive species, such as *Sphagnum* mosses and *Trichophorum cespitosum*, especially in drier climatic conditions, but it is likely that the effect on vegetation will not extend more than 10% from the drains created (Coulson et al, 1990). The method of cutting up-slope by operators results in the creation of drainage channels/gullies that allow for faster water flows from sloping peatlands which have had the vegetation interception buffer removed. This has the potential to result in flooding in lower areas and erosion incidences, particularly when combined with open drains. (An example being the flooding of Marble Arch Show caves in the 1980's.)

## **Vegetation composition**

39. The use of mechanical equipment on an ASSI has the potential to cause adverse impacts on the special scientific interest. Tractor wheels for example will crush bog vegetation as well as compressing the acrotelm, which kills or reduces the vigour of the vegetation growth. Meharg, 1988; Todd, 1995 found that species diversity was reduced due to crushing and compaction; and there was a reduction in the mass of surviving vegetation and in vegetation height. In addition, vegetation is buried by the extruded peat (Hamill, 1996) and the underlying peat (the catotelm) is also compressed.

## **Compaction and reduction in water storage capacity**

40. The main impacts of mechanised cutting on soil properties are crushing and compaction, slumping of the peat horizon, and the shearing and mixing of the peat layers (Bayfield et al. 1991). The bulk density of the peat also increases with cutting intensity (Hamill, 1996). Compacted peat is less porous and its potential to store water somewhat reduced. In detail, compaction is the compression of the acrotelm which causes changes in the bog surface microtopography, levelling hummocks and hollows, and disrupting drainage and peat structure. This increases surface saturation so that surface flow and ponding becomes more frequent, while reducing the capacity of the surface to hold water (Hamill, 1996). These conditions may be, therefore, inhospitable for the regeneration of characteristic peatland species such as *Sphagnum* mosses.

## **Vegetation composition changes**

41. Mechanised peat cutting results in a highly disturbed habitat which puts stress on plants (Hamill, 1996). Cutover blanket bogs provide ample opportunity for non-native colonisers such as *Campylopus* spp to flourish. The regeneration of *Calluna Vulgaris* and *Sphagnum* spp (characteristic peatland spp) is, however, restricted by their means of reproduction as well as through physical impact on the acrotelm. *Calluna vulgaris* has an apical mersitem (Armstrong and Milne, 1993), with new shoots appearing in April and

vegetative growth reaching its peak in July. Peat cutting between April and June would destroy the annual shoot production resulting in a decline of *Calluna vulgaris* cover.

42. *Sphagnum* mosses require wet conditions, and drying out of the bog would inhibit the re-establishment of sphagna as the initial layer may not be thick enough to buffer drought conditions. The water content of peat decreased with increased compaction (Hamill, 1996) i.e. drier peats are more compacted than wetter sites, which infers that prolonged periods of cutting may have a significant impact on the potential for specific vegetative regeneration. The removal of vegetation further destabilises the area which may result in erosion incidences in times of heavy rain.

### **Access tracks**

43. Extraction of peat from an area that does not have direct access to an existing tract may require the construction of a new track that could result in the direct loss of habitat. The reuse of an abandoned tract may also result in the destruction of regenerating characteristic peatland species.

### **IMPACTS FROM HAND CUTTING**

44. The capacity to extract peat by hand in a given period is significantly less than that which can be achieved by mechanised cutters which can cut a years supply of turf within a few hours; cutting approximately 240 turfs a minute, compared to 6 by hand (Cruickshank et al, 1991). However, hand cutting of peatland, although not as severe as machine cutting, can significantly alter the peatland landscape. It should be remembered that cutting for domestic fuel by hand in past times has had the biggest impact on Northern Ireland's peatlands as mechanised cutting was only introduced relatively recently in the 1980's.
45. Cutting by hand generally requires the removal of surface vegetation and extracting the deep peat below this layer using a specially designed spade. It is good practice when hand cutting to replace the surface sod back on the cutover surface. However, despite such advantageous best practice, hand cutting does remove substantial amounts of peat from the bog over time, thereby affecting hydrological system within the area; and the re-vegetated cutover bog will only develop into regenerating peatland under ideal hydrological conditions.
46. The indirect impacts from turf cutting by hand, particularly compaction of the peatland, are not as severe from hand cutting when compared with mechanised means, as the actual cutting is not carried out using heavy machinery, and there is normally reduced compression of the peat layers. Consequently, ground conditions for the re-establishment of characteristic peatland species are more favourable. If the hydrological conditions are suitable, good cutting practice has been followed and sufficient time (many decades) has been given, vegetation composition after hand cutting appears to be similar to that of an intact bog (Hamill, 1993.)

47. Although the long term impacts of hand cutting is not as severe as mechanised cutting, the vegetation composition and structure, the peat surface as well as the hydrology of the area are adversely impacted from the cutting.

## **SUMMARY OF IMPACTS**

48. Peat cutting will have direct adverse impact on vegetation composition and structure, the peat surface, and the hydrology of the area. Such impacts can result in the reduced capacity of the site to recover, and lower the regenerative abilities of the specialised peatland vegetation. The degree of impact is related to the nature and extent of the cutting.
49. Overlying vegetation is a highly important structural component of a peatland site, providing a protective layer for the actual peat element. Removal of the vegetation, or its destruction resulting from peat harvesting activities, results in the destructive oxidation of the actual peat. This oxidation process can also occur as a result of the creation of open drains during site preparation, especially in wet bogs. Vegetation removal, and the direct exposure of the peat to the elements, also creates the risk of erosion that may range from minimal, to moderate to severe, depending on the degree of gradient of the land.
50. The creation of new drains, or the modification of existing surface drains may be necessary in the preparation of sites for peat cutting, on wet bogs in particular. Such drains may dry out the surface of the peatland, thereby affecting vegetation composition, as well as increasing the potential for flooding and erosion incidences through the relatively rapid discharge of water from the site.
51. Cutting peat, especially by machine, will have a direct adverse impact on the vegetation present as it will be crushed by machinery traversing the surface, as well as being buried under the extruded peat. Such traversing also compacts the acrotelm, which is the layer in which water table fluctuations occur and where the rooting layer of vegetation exists. The acrotelm is, typically, between 30 and 50 cm in depth, but it can be compacted to 10cm following machine cutting. Importantly, it can be compacted to an extent that the water retention capacity is diminished and the bog surface microtopography is changed. (Below the acrotelm is the catotelm which is the layer of peat permanently below the water table).
52. The vegetation composition which regenerates on the bare peat will depend on the severity and number of cuts within the area; but there is a distinct possibility that the bog may not regenerate as conditions may have changed dramatically, to the extent that it will not facilitate characteristic bog species re-growth.

## **CURTAILMENT OF THE RIGHT TO TURBARY – LEGAL AND FINANCIAL CONSIDERATIONS**

### **Provisions in the Order relating to a consent**

53. Article 33 of the Order empowers an owner or occupier to appeal to the Planning Appeals Commission if they are –
  - a. Refused a consent under Article 32(3)(a),
  - b. Aggrieved by conditions attached to it, if it is for a limited period, or by the length of that period.
  - c. Aggrieved by the modification of a consent.
  - d. Aggrieved by the withdrawal of a consent.
54. The Order does not provide for payment to be made to an owner or occupier who has been refused consent to extract peat under Article 32.
55. The Department may make payment under Article 37 of the 2002 Order in relation to the modification or withdrawal of a consent for peat-cutting. This power to make payment relates to consents which are granted for specified periods under Article 32(4) only.

### **Human Rights Act 1998 and the European Convention of Human Rights considerations**

56. The Order postdates the coming into operation of the Human Rights Act 1998 which incorporated into national law the provisions of the European Convention of Human Rights (ECHR). As part of the consultation process associated with the introduction of the Order, the Department consulted with the Human Rights Commission which took the view that there was nothing in the legislative proposals that impinged unjustifiably on human rights and they had no objections to anything in the related Bill.
57. Having regard to national and European caselaw relating to Human Rights, it is not thought that there is a general requirement for NIEA to pay compensation in the event of refusal of a consent to cut and remove peat from an ASSI.

### **POSITION STATEMENT SUMMARY**

58. The Order places a statutory responsibility on NIEA to declare ASSIs, and to ensure that they are protected and managed in a manner that will secure the special scientific interests for which they were declared. It is, however, also beholding on NIEA to ensure that the landowner's or occupier's consent application is considered in a thorough, fair and balanced manner. Any decision issued in relation to an application must be based on sound scientific analysis that has full and proper regard to relevant provisions of the Order.

## **CLASSIFICATION OF TURBARY**

Turbary may be classified according to the manner of acquisition which is normally by one of the following methods:

### **1. Acquisition by Prescription**

Prescriptive rights may arise in one of the following ways:

#### **a) At Common Law**

At common law a prescriptive claim to a profit a prendre could in theory only be established if the right had been exercised since time immemorial which is fixed at 1189. If it can be shown that a right cannot have been enjoyed since 1189, a claim based on common law prescription must fail. In practice and in the absence of such proof, enjoyment from 1189 will be presumed, once use is proved for the period of living memory. Even 20 years use is sufficient to raise the presumption.

#### **b) Lost Modern Grant**

Like immemorial prescription, Lost Modern Grant is a fiction invented by the Courts. Where a right is shown to have been enjoyed for 20 years or more, the Court will assume it owes its origin to a lost grant. Generally the longer the use, the stronger the presumption of a lost grant, although normally it is after more than 20 years.

#### **c) The Prescription Act 1832**

This provides an additional method of acquiring rights by a user for a period of time. Under Section 1, extended to Ireland via the Prescription (Ireland) Act 1858, claims to profits a prendre are not to be defeated after 30 years enjoyment by showing that the right has not been enjoyed from time immemorial i.e. 1189. After 60 years uninterrupted enjoyment of the rights it becomes absolute unless it was enjoyed by consent or agreement.

### **2. Acquisition by Statute**

#### **a) Regulated Turbary**

Awards of turbary rights by the Department under Section 21 of the Irish Land Act 1903 and Section 26 of the Northern Ireland Land Act 1925. Under these Acts the Department has the power to make Regulations allocating turbary rights to the occupiers and neighbouring occupiers of land sold under the Land Act. The object of Regulations in the eyes of the legislature was not only to ensure an adequate supply of turf whenever possible but also ensure that the turf was dug in such a way as would not hinder the future reclamation of the land.

**b) Land Law (Ireland) Act 1896**

Turbary rights may or may not be registered on the relevant Land Registry folios. At the time of sale of land under the Land Purchase Acts the Land Commission had not time to investigate every turbary right so provision was made in Section 34 of the Land Law (Ireland) Act 1896 for all the holdings vested under the Land Acts to continue to be subject to any previously existing rights, appurtenances and easements.

**3. Turbary Trusts**

When the great Estates were sold under the Land Purchase Acts, Trusts were frequently set up under which trustees, generally representative of tenants' interests, were appointed to hold land for specified purposes such as cutting of turf, grazing etc and to regulate tenants' rights thereunder. In some cases the trusts are no longer operative although the rights and obligations remain.

**4. Registered Turbary Rights**

These are rights which are attached to land and which are registered on the Title Deed held in the Land Registry of Northern Ireland. Since the rights are attached to the land rather than to a particular person, the turbary rights are acquired through purchase of the land. The turbary rights are "appurtenant rights" when they are attached to but not on the land in question (the dominant tenement). They are "burden rights" against the lands over which the right exists (the servient tenement).

**5. Commercial Turbary**

In addition to large scale commercial exploitation, there is potential for smaller scale cutting to take place on banks set on a rental basis and letting is not registered.

(Issued – 31 March 2011)

**PEAT EXTRACTION CONSENT APPLICATIONS - IN OFFICE CHECKS AND ACTIONS**

**ADMIN TEAM**

1. Confirm the applicant's legal entitlement to cut peat (land registry folio check).
2. Confirm that the peat is for use in the dwelling stated on the folio.
3. Confirm that the peat is for domestic use, for the personal use of the applicant legally entitled to cut, and that it is not intended for wider distribution (e.g. family members).
4. Check if the land is subject to a Department of Agriculture and Rural Development agri-environment scheme that applies restrictions to peat cutting.
5. Identify the full extent of turbary rights on the ASSI and advise the Science Team.
6. Identify all extant consents for peat cutting on the ASSI and advise the Science Team.
7. Identify all other pending consents for peat cutting on the ASSI and advise the Science Team.
8. Extraction for commercial purposes should be referred to Planning Service.

**SCIENCE TEAM**

**Pre site visit action**

1. Scrutinise the consent application, considering in particular the proposed scale, location for extraction, location for extrusion/drying, intended method of extraction, requirement for drainage, and if there is a requirement to modify an existing or construct a new access track.
2. Examine Conservation Science site notes to ensure that peat has been specifically identified as a feature in the area that it is to be cut.
3. Examine the ASSI citation to establish the site selection features.
4. Examine the ASSI Views About Management and, importantly, the Conservation Objectives.
5. Examine ASSI site monitoring reports.
6. Examine the full extent of turbary rights identified by the Admin Team.
7. Examine aerial photography to assess the extent of historical cutting and intactness of the peat.
8. Examine all other extant consents for peat cutting identified by the Admin Team to establish if there is likely to be an 'in combination' impact, if granted.
9. Examine all other pending consents for peat cutting identified by the Admin Team to establish if there is likely to be an 'in combination' impact, if granted.
10. Arrange a site visit to ensure a proper evaluation of an application, advising both the landowner and the turbary holder; and issue a 'Notice' under Article 44(4)(a), if necessary.

## Post site visit action

1. Applications for consent should be considered and reported on by NIEA only in the context of the statutory requirements imposed by the Order.
2. Particular regard should be had to the Views About Management and, *importantly*, the Conservation Objectives for the ASSI when processing a consent application; and consideration of these should be reflected in the related scientific report.
3. *Importantly*, consider the potential for restoration of degraded area through positive intervention or by natural processes.
4. Consider if the extraction would –
  - Impact on an intact area of peat.
  - Have a beneficial effect on the peatland (e.g. facilitate the rewetting of a dry or partially dry area of peat).
  - Impact on an area of peat that is not hydrologically connected to the main bog (e.g. remote dry peat stack).
  - Provide other nature conservation benefits in areas where peat restoration may not be possible (e.g. peat pools).
5. When issuing a determination on a consent application, regard must be had to the requirements placed on NIEA by Article 32 of the Order; in particular, 32(5) and 32(7)(b) (giving scientific reasons for the decision).
6. If granting consent -
  - Determine a quantity of peat for extraction by volume, mark the area on site with stakes and GPS, specify minimum depth of peat (at least 30cm on blanket bog) that is to be left intact after extraction, and provide for the safe storage of the top sod for post extraction restoration.
  - Specify a time limit for extraction (with a maximum of two years),
  - Reflect on the vehicles/machinery to be used and specify transit routes/conditions of use.
  - Avoid the construction of new drains.
  - Specify the area for extrusion/drying.
  - Ensure arrangements are made to monitor the impact of the consented activity (during and after extraction, as necessary).
7. Consider post extraction restoration work –
  - Assess the potential for restoration for feature enhancement.
  - Determine conditions that should be attached to a consent to achieve restoration and feature enhancement.
  - Consider the potential impacts restoration may have on adjacent land/landowners/graziers.
  - Apply restoration conditions and requirements to the consent, if granted.

(NOTE – This Annex should be read and applied in conjunction with Paragraphs 22 to 55 of the Position Statement.)

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Peatland Site Survey

Name of Applicant:

Name of ASSI:

<b>Location of proposed site (Grid ref):</b>	
<b>Peatland Type (raised/blanket):</b>	
<b>Date of Visit:</b>	
<b>Name of Surveyors:</b>	
<b>Did you meet anyone on site? Provide details</b>	
<b>Boundaries present</b> (fences, laneways, existing drains etc):	
<b>Access tracks</b> (Construct new road, modify existing road, traverse bog- surface GPS):	
<b>Recent weather conditions:</b>	
<b>General description of site i.e.</b> bare peat cover (%), evidence of active cutting (time frame), lying water, drains present and their gradient, and evidence of ground preparation.	
<b>Description of site in context of surrounding area.</b>	

**Hydrological impact; Flooding/erosion potential.**

<b>Drains - present/absent:</b>	Aerial Photographs	Site survey.	Aspect of drains (eg NW):
<b>New Drains required (extent, location):</b>		If yes, give details re width, depth vegetation present;	

**Ground preparation**

Evidence of active cutting (recent/historical).	
Is proposed area stable - Slumping of banks, eroded areas, area for storage of surface sod?	
Is there evidence of grazing?	
What are conditions underfoot?	

Extraction method							
Hand Cutting		Auger/Sausage machine cut		Bin machine (digger/hopper)		Other	
Frequency of cut:							
Equipment to be used - tractor, trailer, hopper, spade etc: (Compaction impact on acrotelm)							
Quantification/Volume to be extracted (Map surface area using GPS).							
Area m <sup>2</sup>		Depth of removal (m)		Depth of peat (m)			
Peat drying location (on site/off site – GPS if onsite):							

Species Present (Examine citation prior to visit to review designated site features)		
	% Abundance (Does this vary over the site?)	Height of vegetation (cm)
<b>Indicator species of active peatland.</b>		
<i>Sphagnum</i> mosses – Good indicators of active peatland – peat forming vegetation		
<i>Calluna/Erica tetralix</i> (Heather/Crossleaved heather) – Good peatland indicator species. NB. Calluna cover reduced = reduced nest cover and feeding potential = impact on nesting birds.		
<i>Cladonia portensa</i> (Lichen) – Good indicator of minimal disturbance to the area.		
<i>Trichophorum cespitosum</i> (Deer Grass) – Characteristic of the drier ridges of raised bogs and mountainous blanket bogs where it can become widespread		
<i>Eriophorum spp</i> (Cotton Grass) – Indicative peatland species – peat forming vegetation. Indicator of burning – 1 <sup>st</sup> colonisers (palatable to sheep; attract sheep in high densities resulting in intense grazing).		

<b>Indicator species of modified/degraded peat.</b>		
<i>Juncus spp</i> (Rush)-may indicate heavy grazing pressure influence of groundwater i.e. low peat depth. <i>Juncus Squarrosus</i> in particular is an indicator of overgrazing.		
<i>Campylopus mosses</i> - colonising bare peat are indicative of significant disturbance caused by peat cutting and burning.		
<i>Pteridium</i> (Bracken) -		
<i>Molinia caerulea</i> (Purple Moorgrass) – May indicate shallow peaty soils resulting from previous cuttings.		

<p><b>Additional Species present</b> as evidence diversity e.g.          Fauna - Grouse, Hen Harrier, Merlin.          Flora - Bog Aspohdel, Purple Moorgrass, Sundews.</p>	
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<b>Conservation benefits</b>	
<p><b>Potential for reinstatement of degraded area through positive intervention, or by natural processes?</b></p>	
<p><b>Dried bank/isolated stack - hydrologically unconnected?</b></p>	
<p><b>Rejuvenation of peat pools:</b></p>	

**On return to office:**

<b>Summary of application</b>	<b>Potential impact on designated site features.</b>

<b>Cumulative/ in combination impacts;</b> extent of turbary rights, historical consents.	
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**Pre visit requisites:**

- Identify area from Ortho Maps and determine existence of drains
- Review the indicator species list.
- Consult JNCC website for species particular to the site (there is variation from site to site and between blanket bog and raised bog).
- Take cane for measurement of peat depths.
- Take GPS unit to map full turbary plot and proposed cutting area.

**Identification tools;**

- ID keys required
- Mosses and Liverworts of Britain and Ireland, a field guide – British Bryological society. Edited by Ian Atheton, Sam Bosanquet and, Mark Lawley.
- Peatland species document 2010 folder.
- Take a sample if necessary.
- Take photographs of proposed development site and surrounding areas.  
(The latter 2 may be passed to Conservation Science for evaluation, if necessary.)

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Our aim is to protect, conserve and promote the natural environment and built heritage for the benefit of present and future generations.

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