

THE LEGISLATIVE FRAMEWORK PROTECTING IRELAND'S NATIVE WOODLANDS

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NB. This paper is only a guide to legislation relating to the protection of Ireland's native woodlands. It does not purport to be a legal document (ed).

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Abstract

The principal pieces of National and European legislation that afford protection to Ireland's native woodlands are reviewed. These include the Wildlife Act 1976, the Wildlife (Amendment) Act 2000, the European Union Habitats Directive 1992 (transposed into Irish law under the European Union (Natural Habitats) Regulations, S.I. 94/1997) and the Planning and Development Act 2000. In addition, the Environmental Impact Directive 1997 has some relevance under the planning acts. Further, Ireland ratified the Convention on Biological Diversity in 1996, a binding international treaty. The protected status of Ireland's native woodlands in relation to this legislation is discussed.

The main mechanism for protecting native woodlands in Ireland is nature conservation designation. The main designations include Natural Heritage Areas (NHA), Special Areas of Conservation (SAC), National Parks and National Nature Reserves. Most woodland NHAs, however, do not have full legal status to date. One of the main obligations of the Convention on Biological Diversity is the development of a National Biodiversity Plan. A plan for Ireland was published in 2002 and it contains several actions that relate to woodland conservation including the establishment of a Native Woodland Scheme and a national survey of native woodlands. The Forestry Act 1946, which regulates the felling of trees, and Tree Preservation Orders are two other mechanisms for protecting trees and woodlands. Finally, Local Authorities have responsibilities in relation to nature conservation; the most important of which is controlling development within designated sites through the planning system.

There is a range of legislative mechanisms that can be used to protect woodlands. Legislation is of little value, however, if adequate resources for monitoring of sites and enforcement are not available and if the backing of sound conservation policies at a national and local level is absent.

Introduction

In order to protect our natural heritage, including habitats of conservation value, it is important to have comprehensive and effective nature conservation and planning legislation. For legislation to be effective it is essential that sufficient resources are invested in the relevant bodies for monitoring and management of sites and enforcement. An overview of the main relevant European and National legislation, in addition to the international treaties, that afford protection to native woodlands, is provided below. This paper does not provide a full statement of the law but is the interpretation of the author (who is not a legal expert). The legislation discussed generally relates to woodlands of conservation, landscape and amenity value, as well as native woodlands.

Nature conservation designations

The main mechanism for protecting native woodlands in Ireland is nature conservation designation. There are several designations, mostly governed by legislation (Table 1), which can be used to protect woodlands of conservation value. The most important national nature conservation legislation is the Wildlife Act (1976), amended by the Wildlife (Amendment) Act (2000). The European Union Habitats Directive (transposed into Irish law under the European Union (Natural Habitats) Regulations, S.I. 94/1997) has also had a major impact on the conservation of species and habitats in Ireland. Protection mechanisms generally apply to proposed sites as well as designated ones. Protection requires the regulation of development within a protected site and also outside a site if the development is likely to have a significant impact (Anon., 2003). The main conservation designations are discussed below:

Table 1. Summary of the legislation discussed that has implications for the protection or conservation of native woodlands in Ireland.

Legislation	Role in relation to woodland protection
Wildlife Act (1976)	Designation of Nature Reserves; Flora Protection Order
Wildlife (Amendment) Act 2000	Provides mechanism for the statutory protection of Natural Heritage Areas; Recognises Ireland's responsibilities in relation to the Convention on Biological Diversity
European Union (Natural Habitats) Regulations	Designation of Special Areas of Conservation
Planning and Development Act 2000	Tree Preservation Orders; role and content of County Development Plans
Forestry Act 1946	Felling Licences
Convention on Biological Diversity	Development of National Biodiversity Plan
Environment Impact Assessment Directive	Provides mechanism for assessment of the environmental impact of developments.

1. Natural Heritage Areas

Natural Heritage Area (NHA) is a relatively new national designation that forms the basis of the system protecting Irish natural habitats (Hickie 1996). Most NHAs were formerly Areas of Scientific Interest (ASIs), which had no legal protection. One of the main aims of the Wildlife (Amendment) Act 2000 was to provide a mechanism to give statutory protection to NHAs. Approximately 632 NHAs contain woodland of some description (including woodland dominated by non-native species) (Higgins *et al.*, 2004). Only peatland NHAs have full statutory protection to date and most woodland NHAs must be resurveyed and the landowners notified before they are statutorily protected (i.e. the are currently proposed NHAs). (See also 'Planning control').

Considerable additional resources will have to be allocated to the National Parks and Wildlife Service in order to monitor the extensive NHA network effectively. Further, if these sites are to be protected it is important that the Wildlife (Amendment) Act 2000 is enforced where breaches of the legislation occur.

2. Statutory Nature Reserves

The main piece of wildlife legislation in Ireland, the Wildlife Act 1976, empowers designation of sites as National Nature Reserves. 33 of the 78 nature reserves in the country are woodlands or contain important woodland stands (Figure 1) (Hickie, 1996). Generally, nature reserves receive a high level of protection, as they are mostly State-owned. Most were established in the 1980s and early 1990s. It could be argued that more nature reserves should be established due to the high level of protection they enjoy and yet the area of land designated is very small (Table 2). In addition, there are large gaps in the nationwide coverage. According to the legislation, there is an obligation to manage the land designated as nature reserves in accordance with the objectives for which it is designated. In general, nature reserves appear to be poorly resourced with little monitoring or active management.

3. National Parks

National Parks are not specifically governed by legislation (although a National Parks Bill is under consideration; national parks are managed under a number of Acts including the State Property Act 1954) but they are very important in terms of conserving large tracts of land with habitats of conservation value. The main aims of National Parks are nature conservation and public recreation (Hickie, 1996). They are all State-owned and therefore enjoy a high level of protection. Four of the six National Parks (Figure 1) contain extensive areas of native woodland, including Killarney National Park, which contains the largest area of semi-natural woodland in the country (1380ha). The National Parks in Ireland, however, are relatively small by European standards (Hickie, 1996).

4. Special Areas of Conservation

Special Areas of Conservation (SAC) are sites of particularly high conservation value and considered to be important in a European, as well as an Irish context. The legal basis for selecting and designating SACs is the European Union Habitats Directive, transposed into Irish Law under the European Union (Natural Habitats) Regulations 1997 (National Parks and Wildlife Service website). The Directive lists certain habitats (Annex I) that must be protected within SACs. Annex I habitats found in Ireland include raised bogs, blanket bogs, turloughs and certain woodland types (Table 2). However, oak-ash-hazel woodland, a common woodland habitat in Ireland is not included on the Annex I list. Species that must be afforded protection are listed on Annex II of the directive. There are a number of priority habitats and species that are considered to deserve special attention and they enjoy a stricter level of protection.

The Habitats Directive seeks to establish a network of protected areas, both SACs and Special Protection Areas (designated to protect wild birds), throughout the European Community. This network is referred to as Natura 2000. Landowners are notified of proposed SAC designation and they can appeal designation of their land, but only on scientific grounds. Landowners are compensated for actual loss of income arising from designation. A list of "Notifiable Actions" for different habitats is sent to landowners and users. Actions on the list can be carried out only with prior agreement of the Minister. Notifiable actions for woodlands include activities such as tree felling or grazing of livestock. A person who illegally damages a site may be prosecuted or required to repair damage.

The Habitats Directive requires Ireland to introduce controls over any developments likely to damage SACs. The Local Authorities have an important role in this regard and this will be discussed later under Planning Control.

Table 2. The Habitats Directive provides protection for 5 woodland types (listed on Annex I), all but one (marked with an asterisk) of which are priority habitats.

Old Sessile Oak Woods with <i>Ilex</i> and <i>Blechnum</i> in British Isles (Code 91a0)*
Bog Woodland (Code 91d0)
Alluvial Forest (Code 91e0)
<i>Taxus baccata</i> Woods of the British Isles (Code 9580)
Hazel-ash scrub on limestone pavement (Code 8240)

Area of native woodland with some level of protection

The total area of woodland designated within proposed NHAs in Ireland was estimated to be 30,252ha (Higgins, 1999) including semi-natural and mixed woodland and scrub. 5,000ha of this total is commercial forestry. The breakdown of woodland area protected within the various designations is provided in Table 2. The area of native woodland in Ireland, based on the Forest Service GIS database has been calculated at 87,298ha (Martin *et al.*, this vol). This is a very low proportion of the total land area. The proportion of Ireland's native or at least semi-natural woodlands protected within the NHA network is therefore c. 29%.

It should be re-emphasised, however, that most of the proposed woodland NHAs do not yet have full legal status and only Nature Reserves, National Parks and SACs have statutory protection to date. The area of native woodland within National Parks and Nature Reserves, both of which enjoy a relatively high level of protection, is very small (c. 4,000ha). In practice the level of protection afforded to SACs (which cover the largest area) is unclear but in many cases there appears to be little active management. The quality of some sites may deteriorate without active intervention.

Table 3. Area of woodland designated for nature conservation in Ireland (not including 5000ha commercial forestry).

Designation	Area (ha)
National Nature Reserves	2,335*
National Parks	1,734*
Special Areas of Conservation	15,179.9**
Proposed NHAs (overlaps all other designations)	25,191 Total***

*John Cross pers. comm.

**Higgins *et al.* 2004

***Higgins 1999

Other legislation that relates to native woodland protection

1. Planning control

Under the planning legislation (including the Planning and Development Act 2000), Local Authorities have a responsibility to determine policy through their Development Plan and to apply that policy through planning control. Development Plans must include objectives for the conservation of the natural heritage and for the conservation of SACs and other designated sites (National Parks and Wildlife Service website). Under the Environmental Impact Assessment Directive a comprehensive assessment must be made of projects likely to

have significant effects on the environment. Where a proposed development might have a significant effect in relation to nature conservation the Planning Authorities are required to notify the Minister for the Environment. This relates to applications inside, or within 300m of, an SAC, candidate SAC, NHA, proposed NHA, nature reserve, national park and a site of a listed rare plant, among others. Permission for damaging developments in priority habitats may only be given for overriding reasons of public health and safety. Permission for damaging developments in non-priority habitats may only be given for imperative reasons of overriding public interest.

It is essential that there is effective communication between Local Authorities and the National Parks and Wildlife Service to ensure that designated areas are not damaged by development. Some concern has been expressed by the Irish Wildlife Trust (based on a study of planning applications in several counties over a period from 1995 to 1999) that not all planning applications within SACs were referred to the National Parks and Wildlife Service, and that they did not comment on all submitted planning applications (Clerkin & Flynn, 1999).

2. Felling licences

Most trees and forests are afforded some protection by the Forestry Act 1946. A Felling Licence is required for the felling of all trees greater than 10 years of age, although there are several exceptions (Maguire, 2001). Ecological considerations are generally not taken into account when issuing Felling Licences unless the site is designated for conservation, in which case staff of the National Parks and Wildlife Service may be consulted. Trees and woods outside of designated areas or in urban settings are, therefore, vulnerable.

3. Tree Preservation Orders

A Tree Preservation Order (TPO) is another legal mechanism for protecting trees. Local Authorities have discretionary powers to establish TPOs. They can be made for trees and woodlands considered to be of special amenity value and not solely on the basis of ecological value (Hickie, 1996). A tree with a TPO cannot be felled unless the owner applies for and receives planning permission. The number of TPOs in the country is low: some counties have none while County Wicklow has by far the most (Hickie, 1996). A TPO is generally considered to be of limited practical use in protecting trees and woodlands in situations where they are under threat. In the well-publicised case of Tomnafinnogue Wood, Coolattin, Co. Wicklow, the TPO covering this large mature oak-wood only delayed the felling programme, which was eventually licensed by the Forest Service (Hickie, 1996). Despite changes in the planning legislation, TPOs still do not provide absolute protection and only bring trees or woods under planning control. Local Authorities have other powers to designate areas for amenity or conservation (which may include wooded areas) but they are rarely used (e.g. Special Amenity or Landscape Conservation Orders).

4. Flora protection order

The Flora (Protection) Order, 1999 (which supercedes orders made in 1980 and 1987) lists rare plant species protected under Section 21 the Wildlife Act, 1976. It is illegal to disturb or remove the listed species. This protection applies wherever the plants are found and is not confined to sites designated for nature conservation. Some of the rare species listed are found in woodland habitats including narrow-leaved helleborine (*Cephalanthera longifolia*), hairy St. John's wort (*Hypericum hirsutum*) and starved wood sedge (*Carex depauperata*). Sites can be afforded protection from development on the basis of the presence of listed species.

Convention on Biological Diversity

The Convention on Biological Diversity (CBD), which was a product of the United Nations Conference on Environment and Development in Rio de Janeiro 1992, had a significant impact on nature conservation policies and legislation in Ireland and the European Union (EU). The convention was signed and ratified both by the EU and Ireland (Anon., 2002). By ratifying a Convention, a State agrees to be bound by the Convention (Anon., 2002). The Wildlife (Amendment) Act 2000 gives specific recognition to the Minister's responsibilities in regard to promoting the conservation of biological diversity, in the context of Ireland's commitment to the CDB (Anon., 2002).

The CBD requires contracting parties to take measures for the conservation and sustainable use of biological diversity in their home territories (Anon., 2002). One of the main obligations is to develop a National Biodiversity Plan.

Ireland's National Biodiversity Plan was published in 2002 and covers the 5-year period 2002-2006. The Plan focuses in detail on the measures required for the conservation and sustainable use of biological diversity to be taken by all the relevant sectors. Several of the measures listed relate to nature conservation in general and others directly impact on native woodland conservation and expansion. For example, one action proposed in relation to legislation is to "review continuously the adequacy of wildlife legislation in furthering the objectives of strategies for biodiversity" (Anon., 2002). According to the Plan, all new and existing legislation should incorporate provisions for the conservation of natural diversity. Another action listed requires each "Local Authority to prepare a Local Biodiversity Action Plan in consultation with relevant stakeholders" (Anon., 2002). Clare County Council has led the way in this regard by employing a Biodiversity Officer to develop a plan for Co. Clare.

There are 14 actions relating to forests in the National Biodiversity Plan of which three are specifically aimed at native woodlands. All three are being implemented.

- 1 To introduce a Native Woodland Scheme which aims to protect and enhance existing native woodlands, and to encourage the development of new native woodlands. This Scheme is up and running and, despite some funding problems, is a practical mechanism for protecting and increasing Ireland's native woodland resource.
- 2 To encourage the planting and management of 600 hectares (ha) of native Irish broadleaf trees in conjunction with the People's Millennium Forests. Over 600 ha of native Irish woodland have been designated as 16 'People's Millennium Forests'. The forests include newly planted areas and old native woodlands that are being restored.
- 3 To develop a classification system and undertake an inventory of broadleaved woodlands in Ireland. Such a national survey is currently being undertaken by the National Parks and Wildlife Service. This action is essential to provide information on the extent of the existing resource in order to effectively manage it and to develop appropriate conservation policies (Higgins *et al.*, 2004).

The National Biodiversity Plan is a positive contribution to nature conservation policy in Ireland and it clearly demonstrates the cross-sectoral approach that is required for conservation of biological diversity. It provides a detailed list of broad-ranging measures and actions to be taken, and, as described above, those relating to native woodlands are all underway. It is not clear, however, how progress in implementing the plan will be measured as few timescales or concrete targets to be achieved are provided.

Conclusions

There are several legislative mechanisms that can be used to protect woodlands in Ireland. Legislation is of little value, however, without the availability of sufficient resources within the relevant bodies. Resources are required for land acquisition, protection and management of designated sites, compensation for landowners where appropriate, and enforcement of the law. The backing of a sound conservation policy framework at national and local levels is also essential.

A relatively small proportion of our native woodlands are designated for conservation (including the proposed NHAs) considering that native woodlands are a relatively rare habitat, which are under threat not only from development but also from overgrazing and invasion by non-native species. Despite the presence of management plans for SACs, there appears to be little active management of most designated sites apart from a few Nature Reserves and National Parks. Management is essential for many semi-natural habitats in Ireland, including woodlands.

Trees and woodlands that are not legally protected are vulnerable to being destroyed as they have little legal protection. TPOs have not proven to be particularly effective in protecting trees or woods and forestry legislation regulating tree felling does not consider the ecological value of trees or woods to be felled, and generally does not apply in urban districts.

Local authorities have an important role to play in protecting Ireland's natural heritage. County development plans must have a comprehensive nature conservation policy that is an integral part of the plan. In order to have appropriate planning control within designated sites, effective communication with the National Parks and Wildlife Service is essential. Development within designated sites must be monitored closely and planning conditions enforced.

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Figure 1: Location of Nature Reserves and National Parks that contain woodland of conservation value (Adapted from Hickie 1996).