



Research Paper 56/10

23 February 2010

RESEARCH PAPER ON THE WILDLIFE AND NATURAL ENVIRONMENT (NORTHERN IRELAND) BILL 2010

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This paper considers the provisions introduced in The Wildlife and Natural Environment Bill 2010. It focuses on the main areas addressed by the Bill; looking at the background of each of the areas, and what the clauses addressing each of the areas intend to introduce.

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SUMMARY OF KEY POINTS

The Bill consists of 36 Clauses and 3 Schedules. These introduce new statutory provisions; amendments to the Wildlife (Northern Ireland) Order 1985; amendments to the Environment (Northern Ireland) Order 2002; and changes to existing gaming laws. In summary these clauses include provisions for:

- the introduction of a statutory duty upon government and public bodies to further the conservation of biodiversity;
- strengthening the enforcement powers available to the police and the Department's wildlife inspectors;
- making the most of the proposed amendments to the Schedule to the Wildlife Order and placing a requirement upon the Department to undertake reviews to specified timescales;
- amending the form of some offences, for example, making reckless action that harms wildlife an offence;
- making the requirements of the Wildlife Order applicable to the Crown and public bodies;
- making changes to the Environment (NI) Order (2002) for the protection of Areas of Special Scientific Interest (ASSIs)
- The reform of the game licensing and game dealers licensing systems, and the removal of restrictions on the sale of game throughout the year.

CONTENTS

Background	1
Contents of the Bill	1
Overview of the Bill	1
1. Conservation of Northern Ireland's Biodiversity	2
2. Amendments to the Wildlife Order (1985).....	3
Offences: recklessness and causing or permitting unlawful acts	3
Controls on the use of Snares	4
Enforcement: Powers of police.....	5
Enforcement: Powers of Wildlife Inspectors	6
3. Amendments to the Environment (Northern Ireland) Order 2002	7
Duty on Competent Authorities	7
Offences by persons (other than by public bodies)	7
Notification of change in ownership/tenancy	7
Notices and Signs relating to ASSI's	7
4. Game laws	9
Clause 31-Game licences	9
Clause 32-Sale of Game	9
Brief overview of the rest of the Clauses	10

BACKGROUND

The Bill introduces new provisions and amendments to the Wildlife (Northern Ireland) Order 1985 No. 171 (N.I.2) (the Wildlife order) to reflect the increasing significance of protecting Northern Ireland's biodiversity and the need to continue to deter wildlife crime.

The Wildlife Order was one of the main ways of delivering the importance of protecting, conserving and enhancing Northern Ireland's variety of wildlife by providing statutory protection to wild birds, animals and plants. The level of protection offered by the Wildlife Order depends on the species importance, rarity and vulnerability¹.

The Wildlife Order was brought into effect in 1985 and is now considered to be out dated and in need of review. Therefore the main aim of a new Wildlife Bill is to bring legislation up to date with the 21st Century, and to provide protection for the diverse range of flora and fauna in a relevant and appropriately targeted way that fits in with modern times.

There is the need for Northern Ireland to bring itself into line with legislation in Great Britain (GB), by making proposals that follow the steps GB have taken to improve their statutory protection. With the issues of wildlife protection not being boundary specific, some of the changes in the new legislation reflect an all Ireland approach.

In the context of European legislation, the Wildlife Order aims to meet the requirements of the 'Wild Birds' and 'Habitats' Directives (EC Directives 79/409/EEC and 92/43/EC), by providing protection for wild birds both of European and national importance.

CONTENTS OF THE BILL

Clauses 1-3: Biodiversity-new statutory provisions

Clauses 4-26: Amendments to the wildlife (Northern Ireland) Order 1985

Clauses 27-30: Areas of special scientific interest- Amendments to the Environment (Northern Ireland) Order 2002.

Clauses 31- 32: Changes to provisions contained in the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972; the Game Act 1931; the Game Preservation Act (Northern Ireland) 1928; and the Wildlife (Northern Ireland) Order 1985, relating to game species.

Clauses 33-36: Amendments and repeals, Commencement, Interpretation and Short Title.

OVERVIEW OF THE BILL

The next section of the paper will look at the clauses of the Bill. As mentioned above there are 36 clauses, therefore this paper focuses on the main areas addressed by the Bill, looking at the background of each of the areas; the responses to the

¹ [Department of the Environment's Consultation Paper: Review of the Wild life Order 1985](#)

proposals made in the consultation document produced by the Department of the Environment² (see Annex 1 in the document for a list of all the respondents); and finally, what the new clauses addressing each of the areas intend to introduce.

Please note that not all 36 clauses are discussed in detail; those that are not are given a brief overview at the end of the paper.

The main areas of the Bill this paper will address are:

1. Conservation of Northern Ireland's Biodiversity
2. Amendments to the Wildlife Order (1985) to include:
 - Offences: recklessness and causing or permitting unlawful acts;
 - Controls on the use of snares;
 - Enforcement: powers of the Police; and
 - Enforcement: powers of Wildlife Inspectors
3. Amendments to the Environment (Northern Ireland) Order 2002:
4. Gaming laws

1. CONSERVATION OF NORTHERN IRELAND'S BIODIVERSITY

The UN Convention on Biological Diversity (CBD), signed in 1992 following the Rio Earth Summit, commits Northern Ireland to using the earth's biological diversity in ways which do not lead to its decline. European laws, in particular the EC Wild Birds and Habitats Directives, require the Government to take effective action to protect biodiversity.

The review of the 1985 Wildlife Order creates an opportunity to give consideration to Northern Ireland's commitments to the conservation of Biodiversity. Ultimately, the conservation of biodiversity is one of the key goals stressed in the Government's commitment to sustainable development as stated in the Northern Ireland Sustainable Development Strategy 2006. This will place a statutory duty upon government departments, public bodies and statutory authorities to push forward efforts for the conservation of biodiversity.

The Department of the Environment noted the following in its summary of responses to the consultation³:

- 29 respondents commented and offered broad and, in many cases strong support, for these proposals.
- 2 respondents urged direct action 'on the ground', rather than provide general duties.
- A number of respondents wanted to see the wording of the duty clarified to ensure the duty required proactive measures to 'enhance and restore' biodiversity.

² [Department of the Environment, Review of the Wildlife \(Northern Ireland\) Order: Synopsis of Consultation Responses \(March 2009\)](#)

³ [Department of the Environment, Review of the Wildlife \(Northern Ireland\) Order: Synopsis of Consultation Responses \(March 2009\)](#)

- Several respondents emphasised the need for detailed guidance to support the new duty and to make plain the extent of the duty in government policies, while a couple of respondents emphasised the importance of proper resourcing to support the duty.
- Elements such as developing the lists of conservation importance and presenting reports to the Minister were not commented on widely but were supported where responses were given.

CLAUSES 1-3:

- place a statutory duty upon government departments, public bodies and statutory authorities to push forward efforts for the conservation of biodiversity;
- promote the designation of the Northern Ireland Biological Diversity Strategy (2002) by giving it statutory recognition;
- place a statutory duty on the Department to present to the Minister reports of progress on the implementation of the Strategy every 3 years; and
- place a statutory duty on the Department to produce lists of habitats and species of conservation importance, and to support and promote their conservation. Lists must be reviewed periodically by the Department.

2. AMENDMENTS TO THE WILDLIFE ORDER (1985)

CLAUSES 5 AND 6

OFFENCES: RECKLESSNESS AND CAUSING OR PERMITTING UNLAWFUL ACTS

Provisions in the current Wildlife Order provide for the protection from deliberate acts against wildlife. It is considered that people should act with care when they are performing actions that may detrimentally affect protected wildlife. Therefore, it is proposed that reckless action that harms our most threatened species (i.e. species listed on Schedules 1, 5 and 8) should be treated in the same way as intentional action to harm wildlife. This is similar to changes introduced in Scotland 2004, and will apply to the protection of⁴:

- wild birds, their nests and eggs;
- certain wild animals;
- wild plants; and
- activities conducted within wildlife refuges.

The Wildlife Order makes certain acts that cause harm to wild birds, animals and plants unlawful. This clause will mean that anyone who knowingly causes or allows someone else to carry out those acts will be committing an offence. This will also apply to:

⁴ Wildlife and Natural Environment Bill (Northern Ireland) 2010 Explanatory and Financial Memorandum

- The protection and sale of wild birds, their nests and eggs;
- The protection and sale of certain wild animals;
- The protection of wild plants; and
- the unlawful introduction of 'non native' animal or plant species.

Responses include⁵:

- 21 respondents commented on this proposal. All but two supported it.
- A couple of respondents were concerned generally about applying the concept to wildlife offences due to potential difficulty in assessing the degree of awareness and knowledge of the presence of protected species, and of the specific consequences of a particular action.
- 2 respondents wished to see the concept applied to disturbance of breeding and nesting sites. 3 respondents also wanted to see the concept of recklessness applied to offences related to Schedules 6 and 9, and Article 16 of the Order.

CLAUSE 10

CONTROLS ON THE USE OF SNARES⁶

- makes it an offence to use a self-locking snare or to adapt or use any other form of snare in a way that is likely to cause injury;
- makes it an offence to possess (without reasonable excuse) a self locking snare;
- makes it an offence for anyone to use or be in possession of a snare on any land without the owner/occupiers permission; and
- places a requirement upon any person setting a snare to inspect it at least once a day and to remove or release any animal caught.

According to this clause it is not illegal to use snares, but how they are used will be subject to certain safeguards. For example, in present legislation, it is illegal to use snares to intentionally kill animals; therefore, new legislation hopes to prohibit the use of self locking snares.

Self locking snares are designed to prevent the loop formed by the snare loosening automatically when a force applied to tighten the loop is relaxed, resulting in continuous tightening. The process cannot be reversed, unless by an external party.⁷ Therefore new legislation aims to make it an offence to have such a device in ones possession, not allowing for any excuse (except for museums or educational purposes)

⁵ [Department of the Environment, Review of the Wildlife \(Northern Ireland \)Order: Synopsis of Consultation Responses \(March 2009\)](#)

⁶ Wildlife and Natural Environment Bill (Northern Ireland) 2010 Explanatory and Financial Memorandum

⁷ [The National Anti Snaring Campaign](#)

Free running snares can be used legally to capture a number of animals, for example, those which are considered as a pest species (such as foxes); agricultural pests; and a source of food (such as rabbits). According to the National Anti Snaring Campaign, free running snares can be adapted in such a way as to be used as a self locking snare⁸. For this reason, this clause highlights the importance of continuing to make it an offence to use a device that has been adapted in such a way that causes injury to any wild animal. This strengthens the idea that snares should be used only for holding and restraining an animal, and not set with the intention of inflicting injury.

Legislation under the current Wildlife Order does not deal with the issue of individuals setting snares on land without receiving permission. Managers of land such as farmers, sporting estates, and conservation organisations, need protection from uncontrolled intrusion of this form and the damage associated with unregulated and unauthorised snaring. Consequently, this clause will make it illegal to both set and/or be in possession of a snare on land where authorisation has not been granted.

The current Wildlife Order does not make provisions for the inspection of a snare once it has been set, therefore this clause introduces provisions requiring the inspection of set snares every 24 hours, so as to prevent any unnecessary suffering by the animals. There will also be a requirement on the person inspecting the snare, to remove any caught animal.

Responses to this clause were as follows⁹:

- All 17 respondents except one were supportive of the proposal. One respondent believed the use of snares should be prohibited altogether.
- There were several queries on the exact nature of the proposed possession offence. One respondent considered the offence should not be for possession of a self locking snare, but for 'setting' one.
- 3 respondents considered an interval of 24 hours was too long.
- One respondent would like to see an offence introduced making it illegal to interfere with a legally set snare.
- One respondent wished to see the use of snares regulated by a licensing scheme.

ENFORCEMENT: POWERS OF POLICE

For enforcement, speed of action is of the essence, for example, unless prompt action is taken to secure vital evidence (the carcass of a dead bird or animal), it may be lost or rendered unusable (as a result of the actions of scavengers etc). The police need to have adequate and appropriate powers to search for and seize evidence of an offence quickly, therefore changes are proposed in the order to clarify the existing provisions and enhance the powers available to the police, for example:

⁸ [The National Anti Snaring Campaign](#)

⁹ [Department of the Environment, Review of the Wildlife \(Northern Ireland\) Order: Synopsis of Consultation Responses \(March 2009\)](#)

CLAUSE 18:

- enhances the stop and search powers available to police officers where they believe there is evidence of an offence;
- gives provision for entry to premises under the authority of warrant issued by a lay magistrate;
- permits a police officer who enters upon any land to take samples of anything found on that land and remove them; and
- requires a police officer to produce his authority, if requested, and there is a duty upon any officer entering the land to leave it as it was found.

The use of samples is very important in the investigation of an offence, such as to prove ancestry of a bird or animal.

CLAUSE 19:

- gives police officers powers to take samples from specimens found by them in the exercise of their duties where it is suspected that an offence may have been committed;
- requires the person who has possession of the specimen to assist the sampling process. Any failure to do so is an offence; and
- requires that only a veterinary surgeon can take a sample from a live bird or animal and that a person taking a sample must be reasonably satisfied that no harm will be caused to the specimen.

ENFORCEMENT: POWERS OF WILDLIFE INSPECTORS

Wildlife Inspectors are employed by the Department for inspection and verification work connected with licences or registrations under the Wildlife Order. They are also available, if required, to assist the police in taking enforcement action.

Clause 20 offers the following powers to Wildlife Inspectors:

- granting them powers of entry to investigate offences involving wildlife; and
- Giving the Wildlife Inspector the power to take samples with them.

They must produce evidence of their authority, and must be accompanied by a veterinary surgeon for the purpose of taking samples.

In response to the Department's consultation document:

- 21 respondents offered comment on this proposal and all were in support;
- Several respondents wanted to see the new powers being matched with increased resources for enforcement activity; and

- One respondent raised concerns about bio-security issues when accessing property.

3. AMENDMENTS TO THE ENVIRONMENT (NORTHERN IRELAND) ORDER 2002

Since the implementation of the Environment (Northern Ireland) Order 2002, suggestions have been made by the Department in relation to making amendments to aid the protection of Areas of Special Scientific Interest (ASSI's). According to the Department, the protection of ASSI's is fundamental for the conservation of protected sites which have both European and National importance; therefore this legislative opportunity has been used to make the necessary changes to existing provisions.

Clause 27 to Clause 30 deal with the following:

DUTY ON COMPETENT AUTHORITIES

This makes it an offence for competent authorities to fail to inform the Department of any consent it proposes to give or has given to an operation that will likely cause damage to an ASSI. Emergencies will qualify as an excuse provided notification is given as soon as possible

OFFENCES BY PERSONS (OTHER THAN BY PUBLIC BODIES)

This introduces that it is an offence to damage an ASSI site despite not being aware of the ASSI declaration. The penalty will not be as severe as it is for offenders who are aware they are damaging an ASSI (£20,000 in the Wildlife Order 1985). This introduction will be similar to changes made in England and Wales.

NOTIFICATION OF CHANGE IN OWNERSHIP/TENANCY

According to the Department, in the past, practical difficulties have arisen where there has been a change of ownership of an ASSI. The new owner may be unaware of the obligations placed on them as a result of ASSI designation. Clause 28 aims to remedy this by making provision within the Environment Order that requires the owner/occupier to inform the Department of the change in ownership/tenancy.

NOTICES AND SIGNS RELATING TO ASSI'S

Power is given to the Department to put up, maintain and remove signs on any land included in an ASSI. Anyone who intentionally takes down, damages or obscures such a sign, without reasonable excuse, will be committing an offence.

Under the current Environment Order, the Department has a duty to inform an owner/occupier of land that has been declared as an ASSI, and the obligations they are under as owners. There are certain occasions when it is not possible to identify the owner of the land in question. Therefore provisions have been made which are similar to introductions in Scotland, stating that declarations remain valid even if the Department, having used all possible means, has not been able to track every owner/occupier. This will apply to:

- The notification of initial designation of an ASSI;
- The notification of any variation (i.e. addition of land etc); and
- The de-notification of the land as an ASSI.

Responses to the consultation document were as follows¹⁰:

- In total, 26 respondents commented on these proposals, which received broad support.
- 2 respondents were concerned that the proposals might place excessive burdens on owner/occupiers.
- 12 respondents made specific reference to the new offence of damaging an ASSI despite not being aware of the ASSI declaration, and all supported the proposal.
- With regards to the new duty for competent authorities to inform the Department of consents:
 - 6 respondents supported the proposal; whereas
 - 2 respondents sought clarification on the interpretation of 'competent authorities'; and
 - 1 respondent was concerned about the burden this could place on licensing authorities for certain regimes.
- The proposal to introduce a new requirement on owners/occupiers to inform the Department of any change of land ownership/occupancy was met with mixed responses. 5 respondents were in favour while 6 were opposed (some strongly). Those who were opposed to it believed that the existing land registration system was sufficient to ensure new owners would become aware of the ASSI designation affecting their land.
- Regarding the proposal to amend the procedures for notifying owners/occupiers of ASSI declarations, 7 respondents were supportive of the change; whereas 2 were opposed because of concerns that this may leave owner/occupiers vulnerable to prosecution for breaching legislation if they are not aware of the status of their land.
- 4 respondents supported the proposal to give the Department power to erect signs while 1 respondent expressed concerns about the new power due to bio-security¹¹ concerns. 1 respondent wished to see a new offence introduced for tampering with signs erected by the Department.
- 1 respondent provided detailed comments about the provisions contained in the Environment (NI) Order 2002, calling for a number of other changes to the provisions for managing of ASSIs.

¹⁰ [Department of the Environment, Review of the Wildlife \(Northern Ireland \)Order: Synopsis of Consultation Responses \(March 2009\)](#)

¹¹ Bio security means the protection from biological harm: the protection of the economy, environment, and health of living things from diseases, pests, and bioterrorism.

4. GAME LAWS

The new legislation hopes to bring out dated gaming laws in Northern Ireland from the 1800s, up to date. Species that are of European importance are given additional protection by the 'Wild Birds' and 'Habitats' Directives (79/409/EEC¹² and 92/43/EC¹³). Obligations of the Directives apply to all wild birds including game birds, therefore it is important that existing Game laws comply with those obligations¹⁴.

In England and Wales, recent developments have abolished the need to have a licence for hunting or selling game, and have removed restrictions on selling game during close season. According to the Department of the Environment NI (DoE), Scotland is considering taking similar steps¹⁵.

In a Northern Ireland context, gaming laws are administered by the Department for Social Development (under the Miscellaneous Transferred Excise Duties Act (NI) 1972), and the DoE is responsible for legislation for the hunting and conservation of game species. With respect to the changes made in England and Wales, both Departments considered the idea of the abolition of existing licensing requirements in Northern Ireland¹⁶.

CLAUSE 31-GAME LICENCES

Presently, any person who wishes to kill or deal in game requires a licence, which is available to the general public at local post offices, and costs between £2 (14 days) to £6 (1 year). According to the Department, approximately 1200 are sold annually; and whilst the exact proportion is not known, it is estimated that this represents a small amount of the game shooting community. Anyone who kills or deals in game without a licence may be arrested and fined up to £50 although there is no record of any recent prosecution proceedings.

The Department has considered that the abolition of game licences is unlikely to have any significant impact on conservation or protection of Northern Ireland's Wildlife. It considers this in light of the fact that the number of licences granted is not a true reflection of the level of shooting that takes place. Therefore, it is not envisaged that abolition will result in an increase in numbers hunting game which would in turn put pressure on the populations of game species.

In relation to the above, current systems under the Miscellaneous Transferred Duties Act (1972), that requires anyone who hunts game species or deals in game species to have a licence, is revoked.

CLAUSE 32-SALE OF GAME

Another aspect to the new Wildlife Bill is the further deregulation of existing legislation. In this case the provisions contained in the Game Act 1981, the Game Preservation Act (Northern Ireland) 1928 and the Wildlife Order that restricts the trade of game including deer to certain times of the year is removed.

¹² [EC Wild Birds Directive](#)

¹³ [EC Habitats Directive](#)

¹⁴ [Department of the Environment's Consultation Paper: Review of the Wild life Order 1985](#)

¹⁵ [Department of the Environment's Consultation Paper: Review of the Wild life Order 1985](#)

¹⁶ [Department of the Environment's Consultation Paper: Review of the Wild life Order 1985](#)

Such restrictions are no longer considered necessary given modern refrigeration facilities and food safety standards. As a consequence to this, there is also the removal of the need to mark game and its packaging during transit.

An issue in the past with the removal of restrictions on sale during close season was the difficulty in ensuring that the game on sale was killed lawfully, and frozen during the open season (it could have been killed during the close season and frozen). This may in turn encourage the illegal killing of game species out of season, breaching provisions in Article 19(1) of the current Wildlife Order.

In response to this, the Department¹⁷:

- is not aware of any significant out of season hunting in Northern Ireland; and
- feels that people would not risk hunting in close season as there would not be enough demand for the species affected by a change to the legislation.

Therefore, legislation is introduced to permit the sale of game and venison (killed lawfully) all year round; but makes it an offence to sell game taken out of season.

Brief Overview of the Rest of the Clauses

CLAUSE	MEANING
4	Protection of nests of certain birds: Introduces new statutory protection for the nests of particular birds all year round; anyone who damages or destroys the nest of these birds at any time of the year is guilty of an offence
7	Defences in relation to offences under Article 4: Under current legislation an 'authorised person' is protected by defences if the person has taken action that harms wildlife. In future they must show there was no other option to their action.
8	Disqualification for registration: This clause will disqualify anyone who is convicted of an offence ¹⁸ concerning the protection of species, from applying/ retaining a registration from the Department (eg for taxidermy) within 5 years of such a conviction.
9	Protection of basking sharks from disturbance: This clause creates a new offence for anyone to intentionally or recklessly disturb a basking shark.
11	Protection of wild plants: The purpose of this clause is to clarify that the offence of intentionally picking, removing, uprooting or destroying a protected wild plant also applies to seeds, spores, bulb, corm or rhizome and includes fungi.
12	Introduction of new species: This clause is concerned with the introduction of non-native invasive species and their hybrids. The Department is given power to issue guidance to promote awareness to the risks posed by invasive species.
13	Prohibition on sale, etc of invasive, non-native species: This gives the Department a power to prohibit anyone from selling any

¹⁷ [Department of the Environment's Consultation Paper: Review of the Wild life Order 1985](#)

¹⁸ under the Control of Trade in Endangered Species (Enforcement) Regulations 1997 or the provisions within the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995

	animal or plant species which applies to Article 15 of the Wildlife Order. This will prevent the entry into Northern Ireland of species that are considered to be of high risk.
14	Licences under Article 18: This clause amends provisions in Article 18 of the Wildlife Order permitting activities that would otherwise constitute an offence to be carried out for particular purposes under licence ¹⁹ , by adding the following purposes: for research; for the re-population of an area or re-introduction into an area of wild birds; for conserving animals, wild birds or plant life; or for the protection of inland waters. It will also include for the purpose of development.
15	Discharging firearms, etc, from vehicle: This clause makes it illegal to discharge a firearm at deer from a moving vehicle or a vehicle with its engine running.
16	Licences relating to deer: Gives the Department broader powers to issue licences to kill, injure or take any (fallow, red or sika) deer during the close season. It will allow licenses to be issued for the purposes of preserving public health or safety; conserving the natural heritage; or preventing serious damage to property.
17	Offences: possession of articles for purposes of committing offences: This clause will make it an offence for anyone to be in possession of any article that is to be used for committing an offence under the Wildlife Order.
21	Time limit for prosecution of summary offences: This clause makes the time limit for bringing court proceedings for all offences under the Wildlife Order the same i.e. 6 months, ²⁰
22	Penalties: This makes the maximum penalty for most offences under the Wildlife Order the same. The Courts can impose custodial sentences up to 6 months, except for lesser offences. Greater offences apply to the release, spread or sale of non-native invasive species.
23	Application to the Crown: This clause applies the provisions of Parts 2 and 3 of the Wildlife Order, and any Regulations or Orders made under those parts, to the Crown. A court may declare any contravention of the requirements of those parts unlawful.
24	Review of Schedules to the Wildlife Order: This clause places a duty on the Department to review Schedules 1 to 8 of the Wildlife Order, together with new Schedule A1, every 5 years.
25	Amendments to Schedules 1 to 9 of the Wildlife Order This clause gives effect to Schedule 1 which amends the lists of bird, animal and plant species contained in Schedules 1 and 2, and 4 to 9 to the Wildlife Order.
26	Reduction in close seasons for female deer The close season for female deer, which gives protection from taking and killing, is shortened and changed to end on 30 th September each year.

¹⁹ The granting of licences is left to the discretion of the Department.

²⁰ This begins from the date on which sufficient evidence to justify a prosecution is known to the Department.

33	Minor and consequential amendments and repeals This clause provides that the minor and consequential amendments and repeals set out in the Schedules 2 and 3 to the Act will have effect
34-36	These clauses deal with the Commencement, interpretation and short title of the Act.