

## The Wildlife and Natural Environment Bill: Provisions to amend the Wildlife (Northern Ireland) Order 1985

### Implications for Farmers

#### **Briefing Note**

**January 26th, 2010**

#### **Introduction**

A consultation on the Review of Wildlife (Northern Ireland) Order 1985 took place in February 2008. The Department's summary and response to this consultation followed in March 2009. The overall aim of the proposed revisions are to ensure that the legislation in NI is at least as robust as that in the rest of the UK and to ensure that relevant European legislation is reflected in the provisions of the Wildlife Order.

As stakeholders in the conservation of wildlife and biodiversity these proposals may have implications for farmers. This paper highlights the key proposals and indicates those that may be of specific importance to the farming community.

#### **Schedules**

##### **Schedule 1**

##### **Proposal B - Amend Schedules to the Wildlife Order**

This involves either adding species to those already protected under the schedules or removing those that no longer need protection.

##### **Part 1 refers to 'Birds protected by special penalties'**

14 species have been proposed as additions and 4 to be removed from Schedule 1 Part I (Birds which are specially protected at all times). The Department intends to progress the main changes to Schedule 1.

##### **Part II – Birds which are specially protected during the close season.**

No proposal to change this part of the schedule.

**Schedule 2 – Birds which may be taken or killed outside the close season**

The Department will add the ruddy duck and to remove the curlew to the schedule.

**Schedule 3 – Birds which may be sold dead at all times**

No proposals to change content of Schedule but consideration given to allow the sale of dead mallard. DoENI intends to pursue this as long as a practical licensing arrangement can be established.

**Schedule 5 – Animals which are protected at all times**

This list includes both terrestrial and marine species. The badger (*meles meles*) continues to be included on this list. Given that the badger is implicated in TB in cattle farmers may have concerns about this.

Although not a farming issue specifically it might be worth mentioning that the Department is *not* intending to give statutory protection not the Irish Hare but intends to pursue proactive conservation measures (no detail on what these might be).

**Schedule 7 – Animals which may not be sold alive or dead at any time**

The department has proposed deleting the fox from schedule 7 as the former trade in fox furs is no longer considered a threat to the fox population in NI.

**Schedule 8 – Plants that are Protected**

Twenty-nine plants have been proposed as additions to the list. However, these should not have a great impact on farmers given that each plant exists at no more than 5 locations in NI or are extremely rare.

It is also proposed to add the bluebell to Part II of this Schedule as it is known to be removed for commercial purposes. The only other plant on this part is the primrose.

**Proposal C – General Biodiversity Duty****Proposal C:**

- place a general statutory duty upon government departments and public bodies to further the conservation of biological diversity consistent with the exercise of their functions;
- place a statutory duty upon the Department to designate a Biodiversity Strategy for Northern Ireland;
- 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.

Following consultation the Department intends to proceed with these proposals. While a Biodiversity Strategy was adopted by the Northern Ireland Executive in 2002

the Department believes that it is important to put this on a statutory footing – as it is in England/Wales and Scotland – in order to ensure that the objectives in the strategy are achieved. This will impact *all* departments as it will require them to “*further the conservation of biodiversity in a way consistent with their functions, and with regard to the aims and objectives of the Strategy and the CBD*”<sup>1</sup> (Convention on Biodiversity). Guidance will be developed for departments to help them support the new duty.

### Increased Police Powers

**Proposal D: give the police additional stop and search powers, and powers of entry, but with appropriate safeguards.**

The Department intends to progress these proposals. This is aimed to bring clarity and precision to the Wildlife Order to ensure effective law enforcement. This will, for example, allow the constable to stop and search a suspect if there are reasonable grounds. It is intended that the powers of entry to any premises will be broadened to allow entry to *any* premises under the authority of a warrant issued by a magistrate.

The issue that may be of relevance to farmers is that any constable who enters land will be entitled to:

- Be accompanied by any other person to assist the constable in exercising his powers;
- Take onto the land any necessary machinery, equipment or other materials and may take or remove samples of any articles or substances from the land; and be
- Obligated to secure land that is unoccupied or where the occupier is absent as effectively secured against unauthorised entry as it was when the police officer entered.

A search warrant will be required to enter any dwelling house.

### Powers of Wildlife Inspectors

**Proposal E:**

- give Wildlife Inspectors powers of entry and inspection to investigate offences under Articles 7(1) & (2), 8(1), 9(1); 13(1) & (2) and 14(2) of the Wildlife Order;
- give Wildlife Inspectors powers of entry and inspection for the purpose of checking applications for licences or registrations and for checking compliance with same;
- require persons to make specimens available to Wildlife Inspectors conducting inspections for the above mentioned purposes and to assist the Wildlife Inspectors to examine the specimen;
- give Wildlife Inspectors powers to require the taking of blood or tissue samples; and
- make it an offence to obstruct an Inspector or fail to assist him.

The police will continue to be the main enforcement authority for the more serious wildlife crimes but the wildlife officers carry out inspection and verification work for the department. The department intends to take the above proposals forward which will strengthen the powers of the wildlife officers.

**Concept of 'recklessness'**

**Proposal F:** reckless action that harms wildlife listed on Schedules 1, 5, and 8 should be an offence.

This section may be of concern to farmers. The current legislation covers intentionally destructive or damaging actions however it does not address those situations which, by irresponsible or negligent action, may have negative impacts on wildlife. There is no intention to restrict legitimate actions related to farming, fishing, forestry or other activities e.g. hill-walking as a result of unforeseen consequences of this activity. However, where there is awareness of the presence of a protected species and actions are not taken to avoid damage or destruction then the person carrying out those actions is liable to prosecution. The Department indicates that the concept of 'recklessness' is well-understood by the Courts (e.g. in relation to motor traffic) but there may be questions whether this concept be applied in an agricultural context.

The Department intends to move forward with this proposal.

**Causing and Permitting**

**Proposal G:** make it an offence for a person to cause or permit another person to carry out certain acts against wildlife i.e. those under Articles 4(1), (2) & 6); Article 10(1), (2) & (4); and Article 14(1).

This may be of concern to those farmers who have employees. As it currently stands if an employer instructs an employee to, for example, lay poisoned bait or shoot a bird of prey it is likely that it will be the employee who feels the weight of the law despite being coerced or pressured into the action by the employer. The proposed change ("cause and permit" provision) will mean that any employer who engages in

this behaviour will also be subject to prosecution. The Department will progress this proposal.

### Likely to Cause

**Proposal H:** make it an offence for a person to use or set in position certain articles and devices where these are calculated or likely to cause injury to wild birds and wild animals.

This would include traps or snares; therefore this may be an issue for farmers. However, the Department is seeking legal advice on the wording to determine whether or not the proposed amendment will deliver the intended effect e.g. preventing the setting of traps to cause *intentional* harm.

### Attempts to commit offences

**Proposal I:** create an offence for anyone to attempt to commit wildlife offences.

This is proposed since as the Order is currently worded prosecution can only take place *after* damage has occurred. This is at odds with the aim to protect wildlife from destruction or damage, hence the inclusion of the word 'attempt'. Farmers may be concerned that there could be inappropriate prosecutions under this proposal e.g. due to routine farming activities. While the Department aims to take these proposals forward it will seek legal clarification on the appropriateness of the offence although the Department states that they are likely to mirror that introduced in other UK administrations.

### Invasive non-native species

**Proposal M:**

- Update Schedule 9, which will also include prohibiting the release of certain mammals onto offshore islands;
- give the Department power to prohibit the sale of any species it may specify in an Order;
- provide a discretionary general power for the Department to take action to control, contain or eradicate invasive non-native species and provide associated powers of entry;
- give the Department power to produce Codes of Practice about invasive non-native species;
- give courts the power to issue 'restoration orders' to persons convicted of causing damage under offences under Article 15; and
- clarify that existing offences cover hybrids of any species listed on Schedule 9.

The proposals here address actions to be taken in respect of non-native animal and plant species in order to conserve indigenous species. Those that may be of

importance to farmers primarily relate to accessing land to ensure the Department can take appropriate mitigating action to 'control, contain or eradicate' such species. Also under 'costs and remediation' the polluter pays principle will be adhered to. While this will be based on a *conviction* in respect of this aspect of the legislation it should be made clear that the mere existence of a non-native species on a farmer's land does not in itself constitute an offence and, therefore, that costs of remediation do not fall to the landowner automatically.

As a stakeholder group farmers are likely to be consulted on the Codes of Practice proposed above.

## Controls on the use of snares

### Proposal O:

- clarify the provisions in the Wildlife Order that make it an offence to use a self-locking snare or to adapt or use any other form of snare in a manner that is likely to cause injury;
- make it an offence to possess (without reasonable excuse) a self locking snare;
- make it an offence for anyone to use or be in possession of a snare on any land without the owner/occupiers permission; and
- place a requirement upon any person setting a snare to inspect it at least once in any 24 hour period and to remove or release any animal caught.

Land managers use snares as a legal method for dealing with pest species but they should not be intentionally used to kill animals. Therefore it is proposed to ban self-locking snares i.e. those which continually tightens when force is applied. Any snares that are set will have to be checked at least once every 24hrs to ensure that any animal that has been caught does not suffer unnecessary suffering or stress. The Department plans to proceed with these proposals.

As per proposal G above, clarification may be required to determine if a land owner could be prosecuted on the basis of giving permission for snares to be set knowing that these were self-locking snares.

## Licensing Provisions

**Proposal P**

- make a new provision giving the Department power to issue licences for the disturbance of animals' shelters or movement of rare plants (but excluding European Protected Species) for the purpose of development;
- amend Article 18(3)(c) to permit licensed activity to conserve wild birds; and
- make it an offence to contravene a condition of a licence issued under Article 18 of the Wildlife Order.

This may affect farmers who aim to develop on their own land but which requires the disturbance of animal shelters or movement of rare plants. This license would be issued at the discretion of the Department (and on a case-by-case basis) and would aim to ensure that any disturbance would not be detrimental to the overall conservation of the species. This has a particular relevance in relation to interference with badger setts. The Department also intends to make it an offence to contravene the conditions of the licence.

**Protection of Deer****Proposal R:**

- add Fallow Deer, Sika Deer and Muntjac Deer to Schedule 9 of the Wildlife Order;
- provide a definition of 'trade or business' to distinguish between wild deer and farmed deer;
- give the Department additional power to issue licences for the purposes of the management of deer populations; and
- clarify that shooting from a stationary vehicle without the engine running is permissible.

These issues relates primarily to the management of farmed deer. The Wildlife Order exempts farmed deer from the protection provided by the Order. Therefore better legal definitions were sought for 'farmed' deer and 'those in the wild' as well as a definition of 'trade or business'. However, the consultation exercise merely highlighted the difficulty of reaching agreement on such definitions. Indeed the Department has suggested that the issues surrounding farmed deer may not be achievable through the conservation legislation alone.

The Department proposes to extend the season for hind shooting but details have yet to be decided upon. Deer managers will be allowed to shoot from stationary vehicles although further guidance on this will be produced by the department.

**Reform of game licensing and game dealer licensing laws**

**Proposal T:**

- remove the requirement to hold a licence to take or kill game;
- remove the requirement to hold a licence or certificate to deal in game;
- remove the restriction on dealing in game during the close season; and
- prohibit the purchasing, sale, possession, transporting, etc. of game which a person knew was taken or killed in breach of the game laws.

The Department has agreed to proceed with these proposed changes.

**Environment (NI) Order 2002****Proposal U:**

- introduce a new offence of damaging the an ASSI site despite not being aware of the ASSI declaration;
- make it an offence for competent authorities to fail to inform the Department of any consent it proposes to give or has given;
- introduce a new power for the Department to issue temporary stop notices to prevent unlawful damage to ASSIs and associated powers of entry;
- give new power to Department to issue reinstatement notices and associated right of appeal, and make it an offence for failure to comply;
- introduce a new requirement on owners/occupiers to inform the Department of change of land ownership/occupancy;
- amend the procedures regarding notifications to owner/occupiers;
- give the Department a general power to erect signs/place notices on land within an ASSI or proposed ASSI; and
- clarify when it is a reasonable excuse to carry out an operation which would otherwise be an unlawful act.

Following consultation the Department is going to proceed with the majority of these proposals. These will include enforcement powers regarding the introduction of stop notices, reinstatement notices, and an offence of damaging an ASSI despite not being aware of its designation will enable more effective protection of valuable designated sites.



Farmers may be concerned about any potential burdens for owners/occupiers e.g. informing the Department about change of land ownership/occupancy, but these are being considered further by the Department in an attempt to minimise any burden.

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<sup>1</sup> Review of the Wildlife (Northern Ireland) Order 1985. A Consultation Paper, February 2008.