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Annex 2 - Wildlife & Natural Environment Bill Wildlife Order amendment clauses or additions

Introduction

RSPB Northern Ireland responded in detail to the government consultation on the review of the Wildlife (Northern Ireland) Order 1985 (the **Wildlife Order**) in summer 2008. That consultation proposed a number of changes to both the Wildlife Order and the Environment (NI) Order 2002 (the **Environment Order**). At the time, we also identified additional amendments to the Environment Order, to bring the legislation in Northern Ireland (NI) in line with that in England and Scotland. Furthermore, we suggested amendments that would help Northern Ireland meet its obligations under the European Habitats Directive¹.

In this response to the draft Bill, we consider each draft clause in section A, consider issues raised in the consultation but not included in the Bill in section B, and re-state simple amendments that we believe should be included in this Bill (section C).

Key points

- **We offer support for the new biodiversity duty and related clauses** but recommend some minor additions or edits.
- **We strongly support the introduction of custodial sentence and increased fines.**
- **We have strong concerns that the curlew has not been removed from Schedule II** and added to Schedule I, given its perilous local and global conservation status and that data suggest that Northern Ireland's breeding birds probably winter exclusively in the country.
- **We seek the inclusion of additional species on the proposed Schedule A1**, to ensure protection of nest sites outside the breeding season.
- **We ask for a statutory duty to report on licences, alongside a review and tightening of licence procedures**, particularly the general licences. We believe this is necessary to ensure compliance with the Birds Directive.
- **We seek a comprehensive review of the legislation on non-natives**, to provide clarity and adequate protection from invasive alien species. There is unlikely to be an opportunity to make these changes in Northern Ireland over the short to medium term, and we believe it would be a lost opportunity not to make these amendments now.

¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

A. Support for clauses included in the Bill

New Clauses

Clause 1. Duty to conserve biodiversity

This clause (1) includes a biodiversity duty for public bodies. **The RSPB supports this.**

(3) This clause includes the definition of the term 'conservation of biodiversity' to include 'restoring or enhancing species populations or habitats' included in the legislation. **The RSPB supports this.**

(4) **The RSPB would like to see the wording changed** here to 'The Department will/must issue guidance'. We think it is vital for guidance to be produced on what the biodiversity duty actually means for public bodies.

Clause 2. The biodiversity strategy

The RSPB supports (1) and (2) where there is a duty on the government to designate a biodiversity strategy and publish the strategy. However, we propose that the Northern Ireland Biodiversity Strategy (NIBS) is the designated strategy under these proposals and that UK and Northern Ireland Species and Habitat Action Plans are identified as the key mechanism to support and promote the conservation of species and habitats of principal conservation importance.

(4) **The RSPB recommends that a report be published every three years** as proposed in the original consultation and that the report should review work carried out by government and public bodies under the biodiversity duty.

Clause 3. Biodiversity lists

The RSPB supports this placing of a statutory duty on the Department to maintain lists of species and habitats of principal conservation importance and to support and to promote and support their conservation.

Amendments to the Wildlife Order

Clause 4. Protection of nests of certain birds

The RSPB strongly supports this addition of a new schedule to protect the nests of birds which re-use their nests. However, we would like to see Schedule A1 amended to include **peregrine, hen harrier, merlin, barn owl, chough, white-tailed eagle, osprey and red kite**, all species which re-use their nests, for the reasons listed below.

- **Peregrine, hen harrier, merlin, barn owl and chough.** We would like to see the inclusion of these species on schedule A1 as they are regular breeders in Northern Ireland and either priority species or species of conservation concern under the NI Biodiversity Strategy. There is also increasing evidence that the nests and nest sites of some of these species are deliberately targeted by individuals who want to prevent successful breeding. Examples include:
 - Nest sites regularly used by ground-nesting birds of prey, such as hen harrier, being burned in early spring, just before the birds return; and
 - Peregrine eyries being blocked with a strategically placed stone or covered in netting to prevent the scrape or ledge being used.

This may be done in the knowledge that while the bird is not present, no offence is committed, but it will have the desired effect of preventing birds from breeding in that area.

- **White-tailed eagle and osprey.** The Department cited their reason for including Golden Eagle on this schedule as 'Golden Eagles have been re-introduced to County Donegal and whilst there are no plans as yet to extend such a scheme to Northern Ireland, it is always a possibility that as birds become well established in Donegal, they could spread to Northern Ireland for breeding purposes'. The RSPB would like to see the inclusion of white-tailed eagle and osprey for the same reason, namely that there is a good possibility that they will also re-colonise NI in the next few years. White-tailed eagles were re-introduced to Kerry in 2007, are regular breeders in Scotland and individuals have been recorded in Northern Ireland. Osprey is an established breeding bird species in Scotland and speculating pairs have been recorded in Northern Ireland in recent years. Golden eagle, osprey and white-tailed eagle, once established, have been known to use the same nest for decades and would benefit from the protection offered by their inclusion on Schedule A1.
- **Red kite.** Red kites were released in NI for the first time in 2008, again in 2009, and a third and final release is due this year. The birds released in 2008 will reach breeding condition in 2010, establishing this species as a breeding bird, therefore we would like to see it included on schedule A1.

Clause 5. Offences: recklessness

The RSPB supports the principle that 'intentional' should have 'reckless' added alongside throughout the Wildlife Order where there is currently a demand for intent to be proven. However, we believe that this should apply to all species, not just those identified on Schedules 1, 5 and 8. This will overcome the difficulty of proving intent, where misidentification could be claimed as a defence.

Clause 6. Offences: causing or permitting unlawful acts

The RSPB supports this proposal, but also suggests the inclusion of legislation to make the employer liable for any offence committed by his employee. We propose that an employer should be guilty of an offence if a person in his/her employ commits an offence contrary to Articles 4, 6, 10 and 12 of the Wildlife Order, where the offence is in furtherance of the employer's commercial interest, e.g. the illegal killing of predators to protect game birds for shoots run by an employer. This measure is designed to discourage employers from providing tacit support for the illegal activities of their employees. This would have the potential to reduce the incidence of raptor persecution significantly.

Clause 7. Defences in relation to offences under Article 4

The RSPB supports this, but would like to see a review of the licensing procedure, particularly with regards to general licences. See section C for our recommendations on general licences.

Clause 8. Disqualification for registration

The RSPB supports this.

Clause 9. Protection of basking sharks from disturbance

The RSPB supports this.

Clause 10. Snares

The RSPB supports this proposal. We believe that, as Article 6 is to birds, this is an important supplementary to Article 10, for conservation reasons. We recognise the strong public concern to prohibit the use of such devices for animal welfare reasons, most of which are prohibited under Annex VI of the Habitats Directive.

Clause 11. Protection of wild plants

The RSPB supports this.

Clause 12. Introduction of new species

The RSPB supports this clause but would like to see the Department produce Codes of Practice about invasive non-native species, in line with our other non-native species recommendations in Section C.

Clause 13. Prohibition of sale, etc. of invasive, non-native species

The RSPB supports this but would like to see a duty of care is placed on anyone possessing/selling/advertising a non-native species, underpinned by the Codes of Practice. See section C for our further recommendations on legislation relating to non-natives.

Clause 14. Licences under Article 18

The RSPB supports this clause apart from 14.7: we reserve support for this until the licensing procedure has been designed. The RSPB would like to see further amendments made to the licensing procedure, particularly in regard to general licences. These are given in section C.

Clause 16. Licences relating to deer

The RSPB reserves judgement on these proposals until we are assured that the management of deer in this way is:

- a) justified by the individual applying to control these animals;
- b) that non-lethal methods of control have been tried and are shown to be impractical; and
- c) that the impact on native deer populations is monitored to secure the favourable conservation status of these species.

Clause 17. Offences: possession of articles for purposes of committing offences

The RSPB supports the inclusion 24A, as this helps to ensure that damage is not done before an illegal act is undertaken. However, we also recommend that the Wildlife Order be amended to include the text:

Any person who attempts to commit an offence under the foregoing provisions of this Part shall be guilty of an offence and shall be punishable in like manner as for the said offence.

Incidental result of an otherwise lawful operation

We are aware that, every spring, there is considerable public anxiety over the timing of development and land management operations undertaken using a defence of Article 5(2)(c) of the Wildlife Order, which results in the destruction of active nests. We fully recognise that some of this may be justified on the grounds of public health and safety, but we believe that some of this destruction goes beyond that permitted under Article 9 of the Birds Directive (and in this respect does not fully transpose the Directive into domestic legislation). We believe that there is a need for greater clarity in respect of this part of wildlife legislation, and suggest that this should be clarified in the review of the Wildlife Order.

Clauses 18, 19 & 20. Enforcement: constables, powers of constable in connection with samples, wildlife inspectors

The RSPB supports all these clauses, but would like to query if the wording in clauses 18 and 25 (1) (a) which states that where a constable 'suspects with reasonable cause' that an offence is/has been committed covers the detection of offences, as recommended below.

Powers of entry to detect offences

We propose that additional powers of entry onto land be granted to police officers to detect offences. This would require the extension of powers for an officer to go onto and remain on land without a warrant where the officer has reasonable grounds to believe that Schedule 1 or 5 species are present for the purpose of ascertaining whether or not offences are being committed with regard to those species. This would overcome the problem of police being unable to identify offences through lack of access.

Clause 21. Time limit for prosecution of summary offences

The RSPB supports this proposal.

Clause 22. Penalties

The RSPB welcomes the inclusion of fines and custodial sentences as penalties for wildlife crimes. This brings us in line with the penalties offered elsewhere in the UK and gives the public confidence that wildlife crime is viewed as seriously in Northern Ireland as it is elsewhere. The RSPB believes that the deterrent value of custodial sentences when combined with an effective policing strategy can be very effective. For example, across the UK, the number of egg collecting incidents dropped significantly between 1990 and 2005. This decrease is believed to be due to improved policing strategies such as Operation Easter and the introduction in 2001 of custodial sentences under the Wildlife and Countryside Act 1981 (WCA).

Clause 23. Application to the Crown

The RSPB supports this.

Clause 24. Review of Schedules to the Wildlife Order

The RSPB supports the need to regularly review the schedules in order to ensure that the contents remain concurrent with scientific knowledge and the scale of threats, either posed by or to the species listed.

We support the idea of a rolling review process for these schedules, and would not be opposed to each schedule being reviewed every five years, providing that a means exists of permitting the rapid addition of a species by the Secretary of State if a need is demonstrated between periodic reviews.

Clause 25. Amendments to Schedules 1 to 9 of the Wildlife Order

Schedule 1

The RSPB supports the addition of further species to Schedule 1. However, given that Schedule 1 is designed to 'give extra protection to birds that are rare or vulnerable' as quoted in the original consultation paper, the RSPB strongly recommends Schedule 1 be amended to include lapwing and redshank. These species are rapidly declining, and as such are extremely vulnerable. Their inclusion on Schedule 1 would maximise their chances of population recovery.

Schedule 2

The RSPB believes that any revision of the quarry list must be based on sound science and the precautionary principle, as required under the Biodiversity Convention. We believe that the impact of shooting on the population status of all quarry species in Northern Ireland should be reviewed in time for the next review of schedules.

Given its perilous local and global conservation status (classified Near Threatened on the IUCN Red List²), and that data suggest that Northern Ireland's breeding birds probably winter exclusively in the country³, **RSPB recommends very strongly that the Bill is amended such that curlew is removed from Schedule II and added to Schedule I, Part 1, as a matter of priority.** This was raised in the original consultation, but has not been changed. Curlew and lapwing have been added to the UK Biodiversity Action Plan list of priority species⁴ due to severe decline over the last 25 years.

The RSPB supports the inclusion of ruddy duck on Schedule 2, given the ongoing UK programme to eradicate the species.

Schedule 4

Since the drafting of Schedule 4 of the Wildlife Order, we have become increasingly concerned over the paucity of evidence to show that Priority Species identified under the Northern Ireland Biodiversity Strategy, such as reed bunting and yellowhammer, have self-sustaining captive-bred populations. We would like to see a review of the species listed prior to any changes to the Schedule and evidence of captive-bred sources for any additional species prior to inclusion of any new species.

Schedule 9

The RSPB welcomes proposals aiming to reduce the number and severity of non-native species introductions to Northern Ireland. However, though the current proposal to update Schedule 9 is a step in the right direction, we believe that a more comprehensive review of the legislative framework relating to non-native species, in particular, Article 15 of the Wildlife Order, is necessary. Please see section C for further recommendation on legislation relating to non-natives.

We are concerned by the use of the term 'general pest species' in the reasoning for listing on Schedule 9. We recommend that the Department use a more specific criterion, such as animals and plants that have a significant economic impact or create a health and safety problem.

Clause 31 Abolition of game licences and game dealer's licences

The RSPB supports the abolition of games licences and game dealers' licences subject to the introduction of a licensing system for game shoots.

While we understand the Department's desire to scrap outdated and ineffectual licensing requirements under the game licensing legislation, we believe that the Department should consider the merits of introducing a compulsory licensing scheme for all game shoots in Northern Ireland, and to conduct a full review of the impact of shooting on game and quarry

² BirdLife International (in press) *Threatened Birds of the World* 2008.

³ Bainbridge, I. 2002. Curlew *Numenius arquata*. In: Wernham, C.V., Toms, M.P., Marchant, J.H., Clark, J.A., Siriwardena, G.M. & Baillie, S.R. (eds.) *The Migration Atlas: movements of the birds of Britain and Ireland*. T. & A.C. Poyser, London, pp 332-225.

⁴ <http://www.ukbap.org.uk/library/BRIG/SHRW/SpeciesandHabitatReviewReport2007andAnnexes1-3.pdf>

species. We believe that changes to the Wildlife Order are required to complement the Department's proposed changes to the game licensing process, to ensure that protection for wild game birds is enhanced. We are therefore concerned that there is currently no legislative opportunity proposed in the consultation document to achieve this.

The EC Birds Directive makes clear the circumstances under which hunting is permissible. It brings a duty of care towards quarry species, and places a responsibility on both Member States and those who hunt to ensure that the populations of quarry species are conserved. Should an individual be convicted of an offence when in pursuit of quarry, the courts should be able to punish that individual by removing their opportunity to hunt birds. In our opinion, in the absence of an effective game licensing system, an alternative means of achieving this is needed.

Therefore, we believe an improvement on licensing individuals would be to license game shoots. We believe that game shoots should adhere to a set of commonly agreed standards, including compliance with the Wildlife Order. We would like the Department to assess the merits of introducing a compulsory licensing scheme for all game shoots – both upland and lowland – in Northern Ireland. Failure to adhere to agreed standards, including legislation governing the protection of quarry species and birds of prey would then result in courts having the option to withdraw a shoot's licence to operate.

B. Proposals put forward in the Department's Consultation Paper but omitted from the Bill

Proposal H: Amend the wording of the 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

The RSPB supported this proposal, and would like to see the Bill amended to reflect this. However, we would prefer to have the word 'likely' only as this makes the language clearer, easier to interpret and therefore the offence easier to enforce.

Proposal R: To make a number of changes relating to the protection of deer including:

- **Provide a definition of 'trade or business' to distinguish between wild deer and farmed deer;**

The RSPB recommends that a definition of 'trade or business' is included in the legislation to clarify differences between farmed/wild deer.

Other considerations

- **Whether or not mallard should be added to Schedule 3**

The mallard has remained on Schedule 2 and we support this. However, we are concerned that the legality of selling mallard throughout the year may lead to illegal hunting of this species within the close season. We therefore urge the Department to introduce a bespoke monitoring programme to investigate whether the proposal results in an increase in illegal shooting in the close season and to review the listing of the species on Schedule 3 at the next opportunity to ensure that the conservation status of the species has not been compromised.

- **Whether or not additional bird species should be added to Schedule 4, i.e. Crossbill, Hawfinch, Thrush (all), Blackbird, Dunnock, Redstart, Wagtail, Blue Tit, Waxwing and Stonechat**

See comments above in section A.

Ringing conditions

We propose the creation of a new offence of tampering with approved rings or possessing birds wearing tampered rings.

Minimum size of cage

In Article 9(1) of the Wildlife Order, we believe the phrase ‘height, length or breadth’ should be amended to ‘height, length and breadth’, as this has proved the source of some confusion in the interpretation of the purpose of this Article.

- **Whether or not Irish Hare should be added to Schedule 5**

The RSPB gave qualified support for the Department’s proposal to pursue Option 1, namely relying on the existing statutory protection for the Irish hare, in our original consultation response. Despite the amount of scientific information available on this species, its detailed ecological requirements and its true status remain a matter of debate, the latter particularly so following recent studies showing the impacts of survey methods on population estimates. We are also very mindful of recent work suggesting the species may in fact be unique to the island of Ireland. Whilst we show continued support for Option 1, we urge further work to be undertaken to look at ongoing changes in population status, the species’ relation to the introduced brown hare (with which it may interbreed) and re-evaluate the situation during the next five yearly review. In the intervening period, we would like to seek assurance that the Special Protection Orders, giving Irish hare temporary statutory protection, will continue.

- **Whether or not the new offence to disturb or harass a basking shark should also apply to seals**

The RSPB supported this proposal in the original consultation, but there has been no change to the legislation. We would like to see the Wildlife Order reflected to amend this.

- **Whether or not the prohibitions provided by Article 15 of the Wildlife Order and its supporting Schedule continues to be appropriate means of seeking to prevent potential damage to the environment from non-native species that are considered to present the highest possible risks to the environment**

See section C for RSPB’s recommended amendments to the legislation surrounding non-native species.

- **Whether or not to change the shooting seasons**

The RSPB strongly supported the Department’s intent to retain close seasons for game birds in the legislation, and welcomes the fact that no changes have been made to the shooting seasons.

We note however, that the Guidance from the European Commission highlights the Court of Justice’s ruling that Article 7(4) requires Member States to set the hunting period to ensure that the period “*guarantees complete protection of the species concerned*”. We do not believe that any new evidence has been presented by the Department to guarantee that any changes to the existing shooting seasons would be in line with the Commission’s

guidance. We believe, therefore, that the hunting dates should remain unchanged until new evidence is presented.

- **Whether or not there should be a new offence of possessing certain pesticides**

The RSPB's experience of supporting the Police Service Northern Ireland (PSNI) and the NIEA in the investigation of crimes against wild birds, particularly the poisoning of birds of prey, has highlighted a legal loophole which allows an individual to possess highly toxic chemicals for which they could have no legitimate use other than to commit an offence of poisoning animals or birds. In our original consultation response, we proposed the introduction of an offence to possess pesticides without lawful excuse. This has not been included and the RSPB would like to know the reason for this.

The experience in Scotland, even in the relatively short time since the implementation of the Possession of Pesticides (Scotland) Order in 2005, demonstrates the effectiveness of possession controls as an enforcement tool.

The underlying principle behind possession controls is that any person with a legitimate reason to possess a pesticide can do so without having to comply with additional regulations. Anyone who needs to use a chemical on land under their management for an approved purpose (in accordance with relevant pesticide, biocide or poisons legislation) has nothing to fear from the introduction of possession controls. The controls will be directed to a relatively few pesticides implicated in poisoning incidents. We are happy to advise on those substances we believe should be subject to possession controls in due course.

C. RSPB recommendations for further amendments to the Wildlife Order

1. Statutory duty to report on licences

The EU Birds and Habitats Directives require Member States to report regularly on the implementation of Article 9. This requirement is not incorporated into domestic legislation, and we believe that, as a matter of transparency, government should have a statutory duty to report annually on the number of licences issued and the number of organisms killed/taken/removed under these licences.

2. General licence procedure

To coincide with this revision of the legislation, we urge the Department to review licensing procedure, particularly with regard to the general licences. We believe that a review of the general licences should:

- Require individuals operating under a licence to be able to demonstrate that their circumstances require such action, that lethal control will be effective and that no other solution is available.
- Assess the evidence of impact that each species included on a general licence has on each activity listed in Article 9(1) of the EC Birds Directive. This should include assessment of scale and frequency of damage, effectiveness of non-lethal deterrents and effectiveness of lethal control. Species should only be included on general licences where there is demonstrable evidence of the impact of each species and where the impact is generally so serious or widespread that granting individual licences would be impractical.

- Consider the conservation status of the species concerned in determining the appropriateness of its listing on the general licence. We are particularly concerned that several priority species for conservation action in Northern Ireland remain on the general licence. We advocate the **removal of house sparrow, starling, great black-backed gull and herring gull as a matter of priority** given the large declines in the populations of these species in the UK and Ireland in recent decades. The breeding population of herring gulls and great black-backed gulls declined by 90% and 32% respectively across the island of Ireland between 1969/70 and 1998/02⁵ whilst the house sparrow and starling populations in the UK have declined by 62% (1977-1999) and 66% (1974-1999), respectively⁶. The house sparrow has also declined by around 19% in Northern Ireland between 1994 and 2006⁷.
- Include terms and conditions that accurately reflect the requirements of Article 9 of the Birds Directive, to help prevent illegal or misinformed activity. This would be aided by guidance that clearly defines the purpose of each licence. Each licence should state explicitly that failure to comply with all the terms and conditions while using the licence constitutes a criminal offence under the Wildlife Order.
- Prohibit the use of the general licences by individuals who have been convicted of wildlife or animal welfare offences (as introduced in Scotland and England following a recent review of the general licences).
- Introduce a monitoring system to collect data on the number and species of birds killed/taken under the general licences. It should be a requirement of licensees to submit an annual return that provides this information.
- Improve the conditions which apply to the use of cage traps:
 1. The tightening of the condition guiding the state of cage traps when they are not in use, to ensure that they cannot easily be reset, e.g. by removing the access door to fixed cage traps, or by storing portable cage traps. All containers for food and water should be removed so that birds are not attracted into the trap. This is to prevent the incidence of birds entering unused traps and starving to death, which has been reported in a variety of species.
 2. That the use of cage traps is confined to the taking of corvid species only and that the use of Larsen traps is confined to the taking of magpie, carrion crow and hooded crow.
 3. The addition of a condition to ensure that cage traps are inspected from a sufficiently near distance so that smaller birds caught in a trap may be detected.
 4. The addition of a condition, on all licences where the use of cage traps is permitted, requiring users of the licences to maintain records of birds caught in the traps. In view of the widespread concerns regarding non-target capture, misuse and abuse of cage traps, these records would inform future regulation decisions.
 5. The addition of a condition to ensure that the trap user's contact details are fixed to the trap, to allow the authorities to locate users during enquiries.

⁵ Mitchell, P.I., Newton, S.F., Ratcliffe, N. & Dunn, T.E. 2004. *Seabird populations of Britain and Ireland*. T & AD Poyser.

⁶ Gregory, R.C., Wilkinson, N.I., Noble, C.G., Robinson, J.A., Brown, A.F., Hughes, J., Procter, C., Gibbons, C.W. & Galbraith, C. A. 2002. The population status of birds in the United Kingdom, Channel Islands and Isle of Man. *British Birds* 95: 410-448.

⁷ Raven, M.J., Noble, C.G. & Baillie, S.R. 2007. *The Breeding Bird Survey 2006*. BTO Research Report No. 471. BTO/RSPB.

3. Review the legislation on non-natives

The RSPB welcomes changes in the legislation that aim to reduce the number and severity of non-native species introductions to Northern Ireland. However, though the update of Schedule 9 in the draft Bill is a step in the right direction, we believe that a more comprehensive review of the legislative framework relating to non-native species, in particular Article 15 of the Wildlife Order is necessary. Despite moves in Europe to introduce new Directives on non-natives, there is unlikely to be an opportunity to make these changes in Northern Ireland over the short to medium term, and we believe it would be a lost opportunity not to make these amendments now.

Change the construction of the Wildlife Order Section 15(1) and Schedule 9. The title of Schedule 9, Part I, 'Animals established in the wild', remains the same in the draft Bill, despite the addition of a number of species that are not, in fact, currently established in the wild in Northern Ireland (we assume these are not already covered under Article 15(1)(a) offences). This inconsistency derives from an attempt to use Schedule 9 as a way of preventing the release of non-natives, which is not what it was originally designed to do. We recommend that the following changes be made to the legislation to clarify this:

- **Schedule 15 is amended to prohibit the release into the wild of any non-native or native organism.** This can then be accompanied by specific exceptions, such as livestock etc.
- **The legislation should reflect the ecology of native species invasions.** For example, some environments are particularly vulnerable and certain groups of non-natives are particularly dangerous to native wildlife.
- **The terms 'native', 'non-native', 'release', 'wild' and 'wild state', are introduced and defined.** This is important given that a species native to one part of the island of Ireland but not to another is as, or more, likely to be damaging as species from overseas, when introduced outside its natural range. The RSPB acknowledges the difficulties involved in defining these terms but suggest the following definitions and trust that the Department will recognise that the need for such definitions is crucial.

Native: means in relation to any plant or animal, a plant or animal the presence of which in any part of Northern Ireland or the Republic of Ireland is or would be within the past or present natural distribution of the species or subspecies in which it is taxonomically classified;

Non-native: means in relation to any plant or animal, a plant or animal the presence of which in any part of Northern Ireland or the Republic of Ireland (i) is or would be outside the past or present natural distribution of the species or subspecies in which it is taxonomically classified, where such natural distribution includes any part of Northern Ireland or the Republic of Ireland or otherwise; and (ii) directly results from or would directly result from any action of man; and includes any hybrid of any such plant or animal;

Release: means any human action the direct or indirect consequence of which is to facilitate the movement or dispersal of any animal or plant into the wild;

Wild: means any location or area from which the unaided movement or dispersal of any animal or plant to another location or area is possible under normal conditions;

Wild state: means the state of any animal or plant where the animal or plant may move or disperse unaided from any location or area to another location or area under normal conditions.

- **The legislation reflects the need to tackle the invasion of non-native species at the earliest invasion stage.** In contrast, the Schedule 9, Part 1 currently focuses on preventing release of species that are already established in the wild.
- **A duty is placed on the Department** to require action to control, contain or eradicate those animals or plants deemed to pose a serious threat to flora, fauna or social or economic interests.
- **The duty is accompanied by a power to recoup the costs of control,** containment or eradication, based on the 'polluter pays principle'. This will be in line with the requirements of the EU Liability Directive and should be an important element of any 'restoration order' required.
- **The Department has power to produce Codes of Practice about invasive non-native species.** The draft Bill merely states that 'Department may issue guidance'.
- **A duty of care is placed on anyone possessing/selling/advertising a non-native species,** underpinned by the Codes of Practice.

4. Offences committed elsewhere in the EU

The RSPB is increasingly concerned about UK residents undertaking wildlife crime overseas, especially egg-collecting in the European Union. As laws have become more rigorous, we are obtaining evidence that the most hardened individuals are transferring their activities abroad. Unless they are caught in the act, it is highly unlikely that they will subsequently be deported and prosecuted in the country where the offence took place, should their crime come to light in the UK at a later date. We note that domestic legislation in other parts of Europe (e.g. Germany), permits prosecution for certain offences committed elsewhere in the European Union, and we suggest that the legislation should seek to block this loophole by enabling prosecutions of residents of Northern Ireland for offences committed abroad. We seek clarification as to whether this will be covered by the insertion of 7(5)(aa) by clause 8.

5. Best-practice standards of hunting

We believe that consideration should be given to the extent to which hunting of birds in Northern Ireland meets some of the best-practice standards of sustainable hunting elsewhere in Europe, as per the spirit of Article 7 of the Birds Directive. We note, for example, that the UK is now unusual in not requiring all hunters to undergo some form of proficiency test in order to obtain a permit to shoot. In Clause 31, it has been proposed that licenses for game should be abolished and we accept this proposal subject to the introduction of licenses for shoots. However, we do wish to see a system of bag returns introduced so that the Department can monitor the sustainability of hunting on wild birds and thus meet the requirements of Article 7(1).

6. Education

Given the need to ensure that both Orders are understood by everyone in Northern Ireland, we propose the inclusion of the following text relating to Part 1:

Every local authority shall take such steps as they consider expedient for bringing to the attention of the public and of schoolchildren in particular the effect of—

(a) the provisions of this Part; and

(b) any order made under this Part affecting the whole or any part of their area.

*Anne-Marie McDevitt
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RSPB Northern Ireland*